

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923

No. 200

JAMES EVERARD'S BREWERIES, APPELLANT,

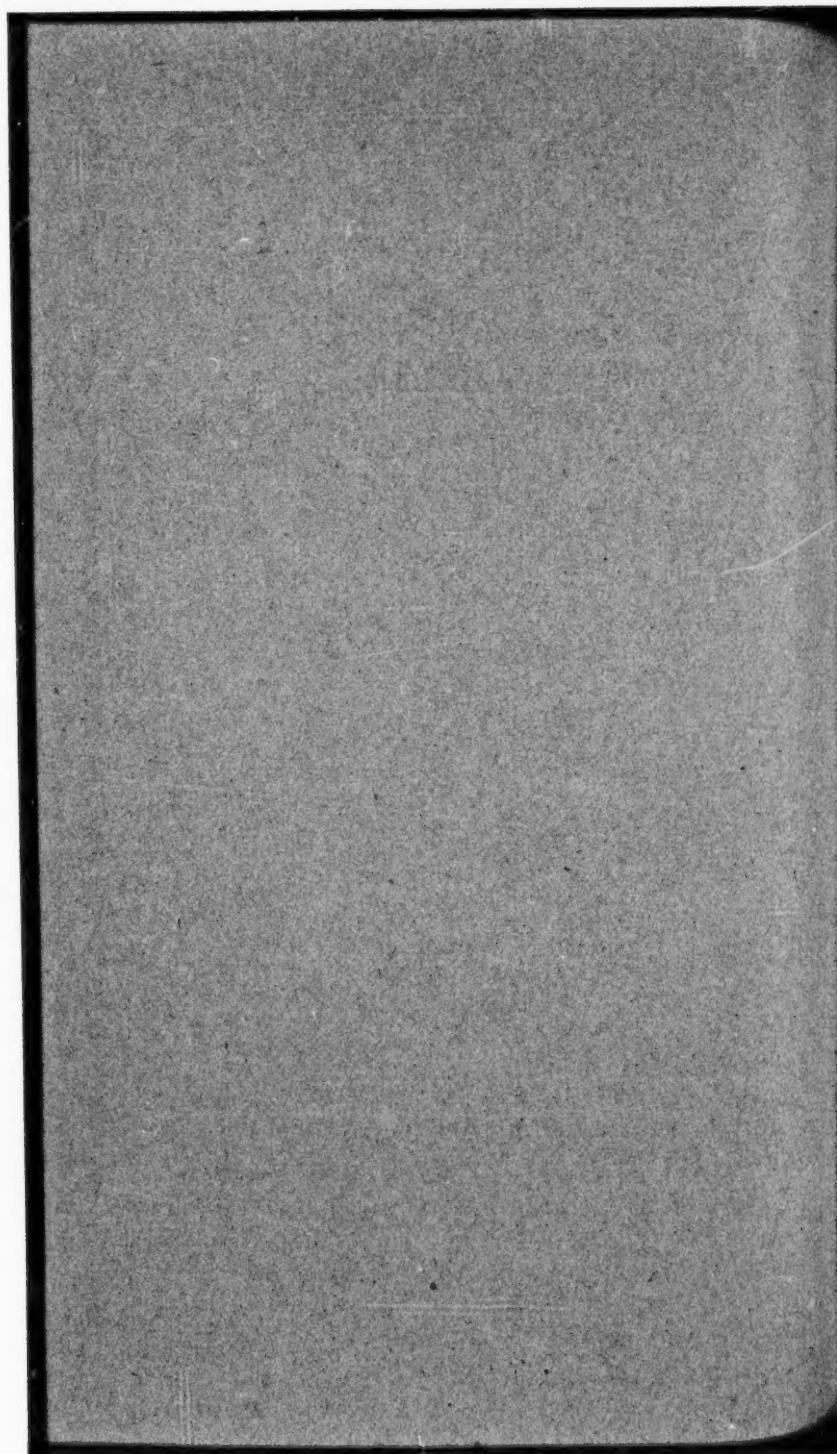
vs.

RALPH A. DAY, PROHIBITION DIRECTOR OF THE STATE
OF NEW YORK, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

FILED JANUARY 18, 1923.

(29,351)



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OCTOBER TERM, 1922.

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vs.

RALPH A. DAY, PROHIBITION DIRECTOR OF THE STATE
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INDEX.

	Original.	Print.
Record from U. S. district court for the southern district of New York	1	1
Statement under rule 75.....	1	1
Summons	3	2
Amended bill of complaint.....	4	2
Exhibit A to Amended Bill—Eighteenth Amendment to Constitution of the United States.....	18	15
Exhibit B to Amended Bill—Amendments to regulation 60 of Bureau of Internal Revenue.....	19	16
Exhibit C to Amended Bill—Letter, R. A. Haynes to James Everard's Breweries.....	25	21
Exhibit D to Amended Bill—Permit No. N. Y. A-97, issued to James Everard's Breweries, Inc., November 15, 1921.....	27	22
Exhibit E to Amended Bill—Permit No. N. Y. A-98, issued to James Everard's Breweries, Inc., November 15, 1921.....	28	23

Exhibit F to Amended Bill—H. R. Bill 7294, entitled "An Act Supplemental to the National Prohibition Act"	29	24
Order amending amended bill.....	34	27
Stipulation for addition of David H. Blair as party defend- ant, etc.....	35	27
Motion to dismiss.....	36	28
Notice of motion for preliminary injunction.....	38	28
Affidavit of Bryan De Forrest Sheedy.....	40	29
Maurice J. Lewi.....	44	31
A. O. Gettler.....	47	32
Armin St. George.....	50	33
Ralph Hayward Pomeroy.....	72	41
William F. Cunningham.....	74	45
Herman Gliboff.....	77	46
Gustav Scholer.....	79	47
William J. Maroney.....	81	43
Graeme M. Hammond.....	83	48
Luigi Celano.....	85	49
William J. Matthews.....	87	50
Curt E. H. Nicolai.....	89	51
Antonio Arbona.....	91	51
Joseph Samenfeld.....	93	52
A. F. Zahn.....	95	53
C. T. Graham-Rogers.....	97	54
Samuel Dana Hubbard.....	100	54
Arthur M. Shipley.....	101	55
J. G. Vaughan.....	102	55
A. C. Prentiss.....	103	56
Alexander Lambert.....	104	56
H. G. Myers.....	105	56
D. S. Dougherty.....	106	57
John McCabe.....	107	57
Stipulation as to printing.....	108	57
Order denying temporary injunction and granting motion to dismiss	109	58
Judgment	110	58
Petition for and order allowing appeal.....	112	59
Bond on appeal.....	114	60
Assignments of error.....	117	61
Citation	119	62
Stipulation as to transcript.....	120	63
Clerk's certificate.....	121	64
Stipulation as to service of citation.....	122	64

1 **UNITED STATES DISTRICT COURT, SOUTHERN
DISTRICT OF NEW YORK.**

JAMES EVERARD'S BREWERIES, Complainant,
against

RALPH A. DAY, Federal Prohibition Director for the State of New York; Frank K. Bowers, Collector of Internal Revenue for the Second District of New York; William Hayward, United States Attorney, and David H. Blair, as Commissioner of Internal Revenue, Defendants.

Statement Under Rule 75.

This action was instituted on or about the 15th day of December, 1921, by the service of a subpoena following the filing of the original complaint. The action was brought for an injunction to restrain the enforcement of the provisions of the Willis-Campbell Act, which prohibited the brewing of intoxicating malt liquors and revoked the permits previously granted to the complainant for such purpose, because of the alleged unconstitutionality of the Act.

A motion for a preliminary injunction was made, but subsequent to the commencement of the action, the complaint was amended, and there was added as an additional party, David H. Blair, as Commissioner of Internal Revenue by consent.

The complainant then moved for a preliminary injunction upon the amended complaint and upon various affidavits of physicians which were thereupon served. At about the same time the defendants moved for dismissal of the bill of complaint on the various grounds set forth in the notice of motion to dismiss.

2 The defendants also filed affidavits of physicians in opposition to the motion and likewise extracts from the congressional record, and copies of certain sessions in the congressional record which are not printed in this record, but which by stipulation and order may be offered from the originals on file.

The motion for preliminary injunction was heard by Hon. Learned Hand, as well as the motion to dismiss on oral argument of counsel, and at the conclusion of the argument the learned District Judge denied the motion for preliminary injunction and granted the motion to dismiss.

An order for final judgment was thereupon made and final judgment thereafter entered dismissing the bill of complaint with costs against the complainant. The complainant appeals from the final decree in which there was involved the constitutionality of the Act of November 23, 1921, commonly known as the Willis-Campbell Act, and has duly filed the notice of appeal, which has been allowed, the bond, and assignment of errors which appear in the record. The learned District Judge who heard the respective motions, rendered no written opinion.

Equity Subpœna.

The President of the United States of America to Ralph A. Day
Federal Prohibition Director for the State of New York; Frank K.
Bowers, Collector of Internal Revenue for the Second District of
New York; William Hayward, U. S. Attorney, Greeting:

You are hereby commanded to appear before the Judges of the
District Court of the United States of America for the Southern Dis-
trict of New York, in the Second Circuit, to answer a bill of com-
plaint exhibited against you in the said Court in a suit in Equity, by
James Everard's Breweries, and to further do and receive what the
said Court shall have considered in this behalf; and this you are not
to omit under the penalty on each of you of two hundred and fifty
dollars (\$250).

Witness, Honorable Learned Hand, Judge of the District Court of
the United States for the Southern District of New York, at the City
of New York, on the 12th day of December, in the year One Thou-
sand Nine Hundred and twenty-one, and of the Independence of the
United States the One Hundred and Forty-six. Alexander Gilchrist,
Jr., Clerk. Olcott, Bonyng, McManus & Ernst, Plaintiff's Sol'r,
170 Broadway.

The defendants required to file their answer or other defense in
the above cause in the Clerk's Office of this Court on or before the
twentieth day after service hereof excluding the day of said service;
otherwise the bill aforesaid may be taken pro confesso. (Sgd.)
Alexander Gilchrist, Jr., Clerk. [Seal.]

4 United States District Court, Southern District of New York.

[Title omitted.]

Amended Bill of Complaint.

To the Honorable the Judges of the District Court of the United
States for the Southern District of New York, sitting in equity:

The complainant, James Everard's Breweries, a corporation,
brings this, its amended bill of complaint, against the above named
defendants, and respectfully shows unto this Honorable Court as
follows:

I. Complainant is a corporation organized and existing under the
Laws of the State of New York, and has its principal place of business
in the City and County of New York, in the said State.

II. Complainant is informed, and verily believes that Ralph A.
Day is the duly qualified and acting Federal Prohibition Director for
the State of New York, having under his jurisdiction also the super-
vision and regulation of the traffic in intoxicating liquors and bev-

erages in the Borough of Manhattan, City of New York, and that Frank K. Bowers is the duly qualified and acting Collector of Internal Revenue in and for the Second District of New York, embracing the jurisdiction of the Borough of Manhattan, County of New York, and City of New York, and that William Hayward is the duly appointed and acting United States Attorney in and for the Southern District of New York, and that David H. Blair is the duly appointed Commissioner of Internal Revenue of the United States.

III. Upon information and belief that said defendants are by law expressly charged with authority, power and duty to carry out the provisions of the various Acts of Congress, relative to the enforcement of the National Prohibition Laws and the regulations or decisions of the Commissioner of Internal Revenue within that portion of the City and State of New York, where complainant has its principal place of business, and carried on said business.

IV. This is a suit of a civil nature arising under the Constitution and Laws of the United States. The matter in controversy exceeds the sum or value of Three Thousand (\$3,000) Dollars in value, exclusive of interest and costs.

5 V. Complainant was incorporated in 1895, under the Laws of the State of New York, as a manufacturing corporation, for the purpose of carrying on and conducting the manufacture and brewing of lager beer, and other malt liquors, and of doing such other business as might be necessary for the operation of the business of such manufacture, and the sale of its products. It succeeded to the business heretofore conducted by James Everard who commenced the business of brewing lager beer and malt liquors in the City of New York in the year of 1885.

VI. Complainant further alleges that its place of business is on the block bounded by East 133rd Street and 134th Streets, between Madison and 5th Avenues, Borough of Manhattan, City and County of New York, and that the complainant there owns valuable parcels of real estate, having an approximate value of upwards of One Million (\$1,000,000) Dollars, and that it has a valuable brewing plant, consisting of brewing apparatus, machinery, wagons, trucks, stock on hand, fixtures and supplies, aggregating many thousands of dollars in value.

VII. That on or about the 29th day of January, 1919, there was enacted the Eighteenth Amendment to the Constitution of the United States, which prohibited the manufacture, sale or transportation of intoxicating liquors within the United States, including the importation and exportation thereof, and gave to the Congress of the United States, and the several States, concurrent power to enforce said article by appropriate legislation. A true copy of said amendment is hereto annexed as Exhibit A.

VIII. Complainant alleges that on the 28th day of October, 1919, the Congress of the United States passed over the veto of the President, an act entitled "An Act to Prohibit intoxicating beverages, and to regulate the manufacture, production, use and sale of high-proof spirits for other than beverage purposes, and to insure an ample

supply of alcohol and promote its use in scientific research and in the development of fuel, dye and other lawful industries." The said Act is popularly known as the Volstead Act, and its short title is the "National Prohibition Act." Said Act is now the law of the United States.

IX. The said "National Prohibition Act," among other things, in Title II thereof provides as follows:

o. "Sec. 1. When used in Title II and Title III of this Act (1) The word "liquor" or the phrase "intoxicating liquor" shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt or fermented liquor, liquids, and compounds, whether medicated, proprieted, patented or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit for use for beverage purposes."

b. "Sec. 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as
6 authorized by this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented."

c. Section 3, second paragraph:

"Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the Commissioner may, upon application, issue permits therefor."

d. "Sec. 6. No one shall manufacture, sell, purchase, transport, or prescribe any liquor without first obtaining a permit from the Commissioner so to do, except that a person may, without a permit, purchase and use liquor for medicinal purposes when prescribed by a physician as herein provided" * * *

e. Sec. 6, second paragraph:

"No permit shall be issued to anyone to sell liquor at retail, unless the sale is to be made through a pharmacist designated in the permit and duly licensed under the laws of his State to compound and dispense medicine prescribed by a daily licensed physician. No one shall be given a permit to prescribe liquor unless he is a physician duly licensed to practice medicine and actively engaged in the practice of such profession."

f. "Sec. 7. No one but a physician holding a permit to prescribe liquor shall issue any prescription for liquor. And no physician shall prescribe liquor unless, after careful physical examination of the person for whose use such prescription is sought, or if such examination is found impracticable, then upon the best information obtainable, he in good faith believes that the use of such liquor as a

medicine by such person is necessary and will afford relief to him from some known ailment."

g. That said Act designates and names the Commissioner of Internal Revenue as the officer charged with the authority, power and duty to make, draft and issue regulations in conformity with said Act for its proper enforcement, to issue permits therein provided for, and to designate, name and appoint assistants and agents to carry out said provisions, with powers, "Any act authorized to be done by the Commissioner may be performed by any assistant or agent designated by him for that purpose."

X. Complainant further alleges to the Court that, under said "National Prohibition Act," said Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury of the United States, drafted, promulgated and issued "Regulations 60 Relative to the Manufacture, sale, barter, transportation, importation, exportation, delivery, furnishing, purchase, possession, and use of Intoxicating Liquor under Title II of the National Prohibition Act of October 28th, 1919, providing for the enforcement of the Eighteenth Amendment to the Constitution of the United States," "Edition February 1, 1920."

7 XI. That said Regulations 60 among other things provide as follows:

A. Under I, "Definitions," Sec. 1, Subdivision (a);

"The word 'Director' or the phrase 'Federal Prohibition Director' shall mean the person having charge of the administration of Federal prohibition in any State."

B. Article VIII thereof, entitled "Procedure for Procurement and delivery of intoxicating liquor by persons holding permits," among other things provides as follows:

"Sec. 54. Any person entitled to procure intoxicating liquor in accordance with these regulations must, in order to obtain such liquor, secure permit to purchase on Form 1410 from the Director, and no person is authorized to furnish or deliver intoxicating liquor except upon receipt of permit to purchase, unless otherwise specifically provided in these regulations.

"(a) Application for permit to purchase must be made on Form 1410, which when approved by the Director, becomes a permit. Directors will at any time furnish permit holders with supplies of such forms."

C. Said Regulations further provide "Sec. 55. Instructions for making application" that said permit holder shall designate thereon a description of intoxicating liquor desired, the quantity on hand, quantity desired, for what purpose desired and the name of vendor from whom to be purchased, and provides further for said "Director" to approve the same and thereby authorize the purchase and sale.

D. "Sec. 69. Use and Sale by Retail Druggists and Pharmacists," among other things, provides:

"(b) Alcoholic medicinal preparations, fit for use for beverage purposes, as are authorized to be manufactured by Article XI hereof, and other liquor may be sold by retail pharmacists, or by retail druggists where the sale is made through a pharmacist, upon physicians' prescriptions to persons who do not hold permits to sell or use intoxicating liquor and without the necessity of receiving permits to purchase, Form 1410, provided the name of the pharmacist (or druggist where the pharmacist is in his employ) appears on the prescription in the physician's handwriting in addition to all other data required by Article XIII."

E. Under subdivision (d) of Sec. 77, Article XIII, of said Regulations, entitled "Physicians Prescribing Intoxicating Liquor for Medicinal Purposes," it is provided as follows:

"(d) Blank prescriptions, Form 1403, are issued by the Commissioner in book form, serially numbered and may be procured free of cost by any physician holding a permit to prescribe intoxicating liquor from the Director. The Director should not issue more than one book of such prescription blanks to the same physician at one time. However, a physician may procure a book of blanks
8 when the blanks remaining in the book in his possession are not sufficient to cover his needs for a reasonable period in advance."

XII. Complainant further avers that the law officers of the United States, through the Attorney General of the United States, in an opinion rendered March 3, 1921, which opinion was given and rendered at the instance of the Secretary of the Treasury of the United States upon certain questions propounded, held in part as follows:

"1. Whether the Commissioner of Internal Revenue is authorized under the Volstead Act to issue a permit for the manufacture of whiskey for medicinal purposes.

"2. Whether the Commissioner of Internal Revenue is authorized under the Volstead Act to issue a permit for the manufacture of beer and other malt liquors, with an alcoholic content in excess of one-half of one per cent, for medicinal purposes.

"3. Whether the Commissioner of Internal Revenue is authorized under the Volstead Act to issue a permit for the manufacture of wine and other vinous liquors, with an alcoholic content in excess of one-half of one per cent for medicinal purposes.

"In answering the first three questions, it may be well to quote the language of my opinion of December 13, 1920, where in referring to Section 1, Title II, of the National Prohibition Act, I said: 'The word 'Liquors' is expressly defined in Section 1, above quoted to include whiskey and other liquors there enumerated.' In section 1, it is provided that the term 'Liquor' includes 'alcohol', brandy, whiskey, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquor'. It will thus be seen that the liquors enumerated in your first three questions come within the definition of the term 'liquor'.

"It was not the purpose of Congress to prohibit the use of liquor for non-beverage purposes, as is evidenced by the wording of the Title of the National Prohibition Act."

And again: "The use of liquor as a medicine was recognized by Congress to be a nonbeverage use. This is shown by the provisions made for the issuance of permits to prescribe (see Section 7, Title II). I am, therefore, of opinion the Commissioner may issue permits for the manufacture of liquors for medicinal purposes."

And again: "The manufacture or sale of liquor for medicinal purposes has not been prohibited. The Constitutional amendment does not expressly confer power to prohibit either."

XIII. Complainant further avers that prior to rendering the opinion of the Attorney General of the United States, above referred to, the Commissioner, without authority or power, undertook to and did deny to various applicants the right of permit to manufacture and sell beer and malt liquors for medicinal purposes by restricting the definition of "liquor," and restricting the interpretation of said act to only spiritous and vinous liquor for medicinal purposes.

9 XIV. That on or about the 24th day of October, 1921, the Commissioner of Internal Revenue, amended the regulations, and especially #60 thereof, and issued a general order to the Federal Prohibition Directors, known as Treasury Department Order No. 3239, a true copy of which is hereto annexed as Exhibit B.

XV. Upon information and belief, that thereafter applications for permits were made by various brewers of malt liquor throughout the United States, and in the jurisdiction of the defendants herein, and an application was made on or about the 1st day of November, 1921, by this complainant, and on or about the 8th day of November, 1921, the complainant received a letter from the Federal Prohibition Commissioner, Washington, D. C., of which a true copy is hereto annexed as Exhibit C.

XVI. That thereafter and on or about the 15th day of November, 1921, after the application had duly been made, there were issued to this complainant, permits granting to the complainant the privilege of manufacturing intoxicating malt liquors, such as beer, ale, porter, etc., for medicinal purposes, and for bottling purposes. True copies of said permits are hereto annexed as Exhibits D and E.

XVII. That as a condition to the granting of such permits, the complainant was compelled to furnish a bond in the penal sum of twenty-five Thousand (\$25,000.) Dollars, and to incur the expense of procuring said bond, and to furnish said bond.

XVIII. That after the issuance of such permits complainant duly complied with all of the regulations required by the Collector of Internal Revenue for the Second District of New York, in respect to the payment of taxes on medicinal malt liquors.

XIX. That after the receipt of such permits (Complainant's Exhibits D and E) complainant made preparation for the manufacture of beer and other malt liquors for medicinal purposes, and invested large sums of money in their manufacture. Complainant also purchased supplies and paid miscellaneous items required by the rules

of the Internal Revenue Department, such as the cost of the bond, various stamps and certificates, and notarial expenses. Complainant also expended large sums for the purchase of supplies and additional apparatus, and at the time of the commencement of this action, had brewed a large stock of beer, ale and stout approximating 900 barrels, and had contracted for a large supply of malt, between the date of the receipt of said permits on or about November 15th, 1921, and November 23rd, 1921, when the Act Supplemental to the National Prohibition Act became effective.

XX. Complainant also avers that since the enactment of said Act Supplemental to the National Prohibition Act dated November 23rd, 1921, complainant had also received numerous inquiries from physicians and druggists, both wholesale and retail, for medicinal beer, and that it would be impossible to estimate the extent and demand for complainant's beer for medicinal purposes, as a large number of physicians and druggists had signified to complainant their desire to order beer for medicinal purposes.

XXI. Complainant further alleges that it has now on hand, and in its stock houses, large quantities of medicinal beer, unsold in containers and packages, put up as prescribed by law, and particularly by Treasury Department Regulation 3239, which it is unable to dispose of, because of the enactment of said Act supplemental to the National Prohibition Act. Complainant further avers that it has paid large sums of money for revenue taxes upon said medicinal beer, which outlay will be a total loss to complainant, if it is prevented from continuing the production and sale of beer for medicinal purposes.

XXII. Complainant further avers that it has expended large sums of money for material with which to manufacture medicinal beer, and that said material is now on hand. Complainant further avers that while a portion of said medicinal beer might be realcoholized, such process would entail a heavy loss to this complainant.

XXIII. Complainant further avers that it has, in all respects, complied with the laws and regulations of the State of New York, for the manufacture and sale of malt liquors, including beer, ale and stout for medicinal purposes in conformity with the laws of the United States, and rules and regulations thereof.

XXIII. A. Complainant also avers, upon information and belief, that after the promulgation of Treasury Decision 3239, the Federal Prohibition Director for the State of New York issued instructions to the pharmacists and physicians in his jurisdiction and made provision for the issuance of licenses and permits to such druggists and pharmacists.

XXIII. B. Complainant further respectfully avers that since the granting of the permits above specified and annexed to this bill of complaint as Exhibits D and E, its medicinal beer, ale and stout have become well known to physicians and pharmacists, and there are a great number of physicians who would, under proper rules and regulations, prescribe such medicinal beer for their patients, and a great number of pharmacists who would fill the prescriptions of such physicians.

XXIII. C. Upon information and belief, that various physicians have been prescribing beer, ale and stout for medicinal purposes, and such physicians have, in all respects, fully complied with all the laws of the State of New York, and of the United States, and rules and regulations thereunder, and that said physicians would continue to prescribe such malt liquors for medicinal purposes, unless interfered with and prevented by the defendant herein named.

11 XXIV. Complainant further avers that it has established a good and valuable business, and that its sales of its products of malt liquors for medicinal purposes have a large demand, which would result in a profitable business, if not interfered with, as herein set forth.

XXV. That on or about the 23rd day of November, 1921, there was enacted by the Congress of the United States, and approved by the President of the United States, an Act of Congress supplemental to the National Prohibition Act, a copy of which is hereto annexed as Exhibit F, which, among other things, provided as follows in Section 2 thereof:

"Sec. 2. 'That only spirituous and vinous liquor may be prescribed for medicinal purposes, and all permits to prescribe and prescriptions for any other liquor shall be void. No physician shall prescribe, nor shall any person sell or furnish on any prescription, any vinous liquor that contains more than 24 per centum of alcohol by volume, nor shall anyone prescribe or sell or furnish on any prescription more than one-fourth of one gallon of vinous liquor, or any such vinous or spirituous liquor that contains separately or in the aggregate more than one-half pint of alcohol, for use by any person within any period of ten days. No physician shall be furnished with more than one hundred prescription blanks for use in any period of ninety days, nor shall any physician issue more than that number of prescriptions within any such period unless on application therefor he shall make it clearly apparent to the commissioner that for some extraordinary reason a larger amount is necessary, whereupon the necessary additional blanks may be furnished him. But this provision shall not be construed to limit the sale of any article the manufacture of which is authorized under section 4, Title II, of the National Prohibition Act."

XXVI. Complainant further respectfully shows to the Court that the character and nature of its said business of manufacturing and selling intoxicating malt liquors for medicinal purposes, by virtue of the said laws, rules and regulations and its said permits hereinabove referred to, is such that in the conduct of its said business it can only sell and dispose of its said products by and through druggists and pharmacists having permits as hereinabove prescribed authorizing the purchase thereof, and upon said druggists and pharmacists being able to have their said applications to purchase, on said Form 1410, from complainant duly authorized and approved by said Federal Prohibition Director of the State of New York; and that complainant's said customers and prospective customers, said druggists and

pharmacists are unable to sell said products except upon duly authorized doctors' and physicians' prescriptions as hereinabove set forth. That as a result of the foregoing, any interference on the part of any or all of the within named defendants with the rights of said doctors and physicians in denying or attempting to deny or interfere with the right to prescribe complainant's malt liquors such as beer for medicinal purposes, or any interference, attempt or threatened interference, by refusing to approve permits to purchase on Form 1410, of complainant's products, as herein above set forth under the laws, rules and regulations, is and would be a serious and direct interference and destruction of said complainant's business in manufacturing and selling its intoxicating malt liquors for medicinal purposes.

XXVII. Complainant further avers that the Federal Prohibition Director of the State of New York has refused to honor and authorize applications of druggists and pharmacists to produce said malt liquor, such as beer, ale and stout for medicinal purposes, and has refused, and still refuses to issue permits therefor, although said druggists and pharmacists have, in all respects, complied with all the laws of the State of New York and the United States, and all the rules and regulations issued thereunder. Upon information and belief, that said Director further threatens to revoke and cancel the permit of any and all physicians who prescribe or attempt to prescribe malt liquor, such as beer, ale and stout, for medicinal purposes.

XXVII-A. Complainant further avers that the Federal Prohibition Director of the State of New York has likewise refused to amend retail or "I" permits and wholesale or "B" permits for beer and intoxicating malt liquors for medicinal purposes, as authorized by instruction issued by the National Federal Prohibition Commissioner to the Federal Prohibition Directors for the various States, including the State of New York.

XXVIII. That by reason of the refusal of the Federal Prohibition Director for the State of New York to issue permits to pharmacists for beer and malt liquors for medicinal purposes, and the denial of the right of physicians to prescribe such malt liquors for such purposes, the complainant has been greatly and irreparably injured in its legal rights to its business and property.

XXIX. Complainant avers that the State of New York is sovereign in all matters relating to the health and welfare of its citizens and the police power of the State is to be exercised for the health and welfare of its said citizens, without interference from any governmental power of authority, unless such power is clearly and explicitly expressed in the Constitution of the United States.

XXX. Complainant further shows that there is no power or authority granted in the Constitution of the United States, or necessarily or properly implied in any of its provisions, or set forth in any amendment thereof, which authorized any officer of the United States, and more particularly the persons named herein as defendants, to interfere with the manufacture and sale by this complainant of malt liquors, when such manufacture or sale, or either, or both,

are carried on under lawful regulations of the United States, and the State of New York.

XXXI. The complainant further respectfully avers to the Court that the said Eighteenth Amendment in the simplest and most explicit language covers and includes only intoxicating liquors "for beverage purposes," and the Supreme Court of the United States has defined the application of said 18th Amendment and the interpretation thereof as relating to "The manufacture, sale, transportation, importation, and exportation of intoxicating liquors for beverage purposes," and law officers of the United States, including the Attorney General of the United States, and the Commissioner of Internal Revenue have acted upon such interpretation in their official conduct and relations with the execution and enforcement of laws enacted pursuant to the authority conferred under said 18th Amendment, as hereinbefore more specifically set forth. And complainant further respectfully shows to the Court that the Congress of the United States gave its sanction to said interpretation when the Act commonly called "The Volstead Act" (approved October 28th, 1919) was enacted with the following title, to wit, "An Act to prohibit intoxicating beverages, and to regulate the manufacture, production, use and sale of high-proof spirits for other than beverage purposes and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye, and other lawful industries."

XXXII. And the complainant further respectfully avers that nowhere in the said 18th Amendment is there any language or word giving to the Congress of the United States power and authority to prohibit the manufacture or sale, or the transportation, importation or exportation of intoxicating liquors for "medicinal purposes," and the Congress is without any power whatsoever under the Constitution to prohibit the use for medicinal purposes or the description for use for medicinal purposes of any form of intoxicating liquors.

And more specifically the complainant respectfully avers that the attempted enactment of the Act entitled "An Act Supplemental to the National Prohibition Act," approved November 23, 1921, in so far as it attempts to provide "that only spirituous and vinous liquor may be prescribed for medicinal purposes, and all permits to prescribe and prescriptions for any other liquor shall be void," is itself beyond the powers of the Congress of the United States, is without authority under the Constitution of the United States, and is wholly unconstitutional and void.

XXXIII. And the complainant further respectfully shows to the Court that the right to health and to be cured of ailments is one of the natural and inherent rights of man, recognized in all ages and by all peoples and governments; that "To heal all manner of sickness and all manner of disease" is and has always been not only one of the greatest privileges of man but one of the highest duties imposed upon him by religion ethics and morals, and this duty has been heretofore considered one of the most sacred objects of government, and has been encouraged and protected by the Constitution

and laws not only of the United States but of the several States, and especially by the State of New York. For the purpose of protecting the health of the people of the States, and especially of the State of New York, the laws have required that the persons handling and selling medicines and drugs must be specially educated and trained as pharmacists commonly known as "druggists" and that medicines

and drugs should be prescribed only by persons educated and trained as physicians and surgeons, commonly known as "Doctors," but it has also been provided by law, and especially by the laws of New York, that when so educated and trained, and when duly licensed as such pharmacists or physicians, respectively, medicines and drugs, including medicines and drugs known to be noxious, poisonous, and dangerous to health and life if or when freely and carelessly used, have been and now are permitted to be prescribed, sold and distributed for the healing and cure of the sick and afflicted, under regulations provided by law for the prescription of the health and welfare of the people.

The complainant further respectfully shows to the Court that under the permits granted to the complainant to manufacture and sell beer and other malt liquors as set forth in this petition, the right so conferred upon complainant was limited and restricted to the manufacture for the purpose of selling, and to the selling, of such beer and malt liquors to the pharmacists as herein described for medicinal purposes and only upon prescriptions by physicians as herein described for medicinal purposes and was granted solely and wholly for the promotion of the health and welfare of the people of the State of New York and elsewhere who were sick and afflicted. And the complainant respectfully avers that in and by such permit there was conferred upon the complainant the right to carry on its business with and by and through the pharmacists, or "druggists" who had permits or could obtain permits to sell the products of the complainant's plant for medicinal purposes and with and by and through the physicians or "doctors" who had obtained or could obtain permits to prescribe such products for medicinal purposes.

XXXIV. Complainant further respectfully shows to this Court that in and by the said attempted enactment of the "Act Supplemental to the National Prohibition Act" approved November 23rd, 1921, the citizens of the State of New York, and the Citizens of the United States, whether resident of New York or elsewhere, were and are denied the natural right and privilege which is of incalculable and immeasurable value of selecting and using the persons who are to administer to their wants as physicians and druggists in time of sickness and trouble to themselves and their families, and the times and the conditions which are to be determined by the physicians and druggists, and their choice for such ministrations and treatment, including the privilege by such physicians to prescribe malt intoxicating liquors for medicinal purposes, if, in their judgment, such mode of prescription seems best, and if such physicians deem it proper in such time of sickness and trouble to prescribe for themselves and their families conscientiously, intoxicating malt

liquors, according to their knowledge and experience as physicians, and according to their science and practice of medicine.

And the complainant respectfully avers that such denial of such natural rights, not only deprives this complainant of substantial property rights, as herein set forth, but also deprives the citizens of New York, and of the United States, of those certain inalienable rights which were guaranteed by the Declaration of Independence, and among which are life, liberty, and the pursuit of happiness, to secure which rights governments are instituted among men, deriving their just powers from the consent of the governed.

Said Supplemental Act of November 23, 1921, also violates the spirit and purposes of the Preamble to the Constitution of the United States in that it does not promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.

Said Supplemental Act of November 23, 1921, is also in derogation of the rights of the complainant and of the people of New York under Amendment V to the Constitution of the United States in that it tends to deprive them of life, liberty and property without due process of law; and also of Amendment X of the Constitution of the United States in that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States restrictively, or to the people.

XXXV. The complainant further respectfully shows to the Court that said "Act Supplemental to the National Prohibition Act," approved November 23, 1921, is not only in itself repugnant to the Constitution of the United States, but also is, in and by, and by reason of such repugnance, an infringement of the powers of the State of New York and of the people and citizens of said State, including not only the complainant but also the pharmacists, the physicians, the sick and suffering and all other persons, because it prevents the interpretation and enforcement of rights and privileges to which they are entitled under the provisions of the Constitution of said State of New York, in which they reside and to the benefits of which Constitution of New York they are guaranteed as citizens of New York by Amendment XIV of the Constitution of the United States, in the first clause of which all such persons are specifically declared to be citizens not only of the United States but also "of the State in which they reside."

XXXVI. Complainant further avers that the defendants have publicly threatened to enforce the provisions of such Act of Congress passed November 23rd, 1921, supplemental to the National Prohibition Act, and to revoke the permits issued to the complainant, to prohibit complainant from continuing the manufacture of intoxicating malt liquors for medicinal purposes, and to institute civil and criminal proceedings, to enforce the same and will revoke the permits of pharmacists who may sell intoxicating malt liquors for medicinal purposes, and have forbidden pharmacists to make such sale, and have and will continue to revoke the permission granted to physicians to issue prescriptions for such purposes, and will refuse to issue prescription blanks to physicians for such purpose, and they are about

to take such steps as will prevent the complainant from disposing of its stock on hand, and continuing the manufacture of intoxicating malt liquors for medicinal purposes, in accordance with regulations previously enacted, and are about to institute civil and criminal proceedings, to enforce the said Act of November 23rd, 1921.

Complainant further avers, upon information and belief, that it is likely that the defendant, Day, as Federal Prohibition Director for the State of New York will cause an order to be issued to this complainant, to destroy its stock of tax-paid medicinal beer now on hand.

16 XXXVII. Complainant further avers that if the defendants, their agents, and servants, and those acting under them are permitted to do the things that have been done, and are threatened, as above recited, to said pharmacists and physicians, and to this complainant, the complainant will suffer great and irreparable injury and damage.

XXXVIII. Complainant further alleges that such attempted prosecutions, proceedings, and suits in said Acts of Congress purported to be authorized and required, and about to be taken by the defendants, their agents and servants, under the provisions of the National Prohibition Act, and supplemental acts, to enforce said acts, will involve this complainant in a multiplicity of legal proceedings, civil and criminal, and will cause irreparable injury to its business in a measure not capable of being measured and adjudicated in an action at law, and complainant has no adequate remedy at law.

XXXIX. Complainant further alleges and avers that the defendants herein are not either jointly or severally possessed of sufficient means to satisfy any judgment against them for the large and substantial damages, which would accrue to the complainant, if the defendants or any of them, enforced the provisions of such Acts of Congress, and if this Honorable Court did not restrain and enjoin said defendants from interfering with the complainant's business and property as aforesaid.

XL. Complainant prays that the Court, by its decree, declare unconstitutional the Acts of Congress signed by the President on the 23rd day of November, 1921, described as "An Act supplemental to the National Prohibition Act."

XLI. Deponent further prays that a temporary injunction issue and other appropriate relief be granted to the complainant prohibiting and restraining, during the pendency of this action, the defendants and their officers, agents, servants and employees, from attempting to interfere, or in any manner interfering with permittees-pharmacists to purchase and sell intoxicating malt liquors for medicinal purposes, and with any and all physicians who hold permits from the United States, and who prescribe for their patients under the rules and regulations of the United States and of the State of New York, intoxicating malt liquors for medicinal purposes, and from interfering, in any manner, whatsoever, with the property, business, or affairs of the complainant, in the manufacture of, and sale of intoxicating malt liquors for medicinal purposes, to permittee

pharmacists, as aforesaid, for sale by said pharmacists on the new prescription of aforesaid physicians.

XLII. And complainant respectfully prays further that an injunction issue specifically against the defendant, Ralph A. Day as Federal Prohibition Director of New York, enjoining and restraining him, as such Director, from enforcing the terms and provisions of the Act, supplemental to the National Prohibition Act, approved November 23rd, 1921, by declining or refusing to approve any further applications for permits by druggists and physicians respectively, for the right to purchase and sell, and the right to prescribe intoxicating malt liquors brewed for medicinal purposes, and from interfering with complainant's manufacture of intoxicating malt liquors and their sale for medicinal purposes to permittee-druggists.

Complainant further respectfully prays that the said Ralph A. Day, as Federal Prohibition Director of the State of New York, be enjoined and restrained from refusing to amend retail or "I" permits and wholesale or "B" permits, hitherto issued to druggists, to include the right to purchase and sell intoxicating malt liquors for medicinal purposes, as provided for in the aforesaid instructions to the State Prohibition Directors issued by the National Prohibition Commissioner.

XLIII. Complainant further prays that the restraining order and preliminary injunction which may be granted herein, pending the final hearing and decision of this cause, whereby the said defendants, their agents, servants, subordinates and employees be enjoined and restrained may, upon final hearing, be made perpetual.

Wherefore, complainant prays that a writ of subpoena issued herein directed to the above-named defendants, and each of them commanding them on a day certain to appear and answer this bill of complaint. James Everard's Breweries, by Robert Hilliard, Complainant, President. Olcott, Bonygne, McManus & Ernst, Solicitors for the Complainant, 170 Broadway, Borough of Manhattan, New York City.

18

Exhibit A to Amended Bill.

Eighteenth Amendment to the Constitution (Prohibition of Intoxicating Liquors).

"Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction hereof for beverage purposes is hereby prohibited.

"Sec. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

"Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress."

And, further, that it appears from official documents on file in this Department that the Amendment to the Constitution of the United States proposed as aforesaid has been ratified by the Legislatures of the States of Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

And, further, that the States whose Legislatures have so ratified the said proposed Amendment, constitutes three-fourths of the whole number of States in the United States.

19

Exhibit B to Amended Bill.

[T. D. 3239.]

Medicinal Use of Malt Liquors and Wines—Labeling of Liquor of All Kinds Sold on Prescription—Regulations No. 60 Amended.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C.

To Federal Prohibition Directors and others concerned:

Regulations No. 60, issued pursuant to the national prohibition act, are hereby amended to cover the manufacture and sale of intoxicating malt liquors for medicinal purposes as follows:

Article II, section 2, is amended by inserting a new subdivision to be designated as subdivision “(g),” providing as follows:

(g) Intoxicating malt liquors such as beer, ale, porter, malt extracts, and similar fermented malt liquors containing one-half of one per centum or more of alcohol by volume manufactured as provided by Article IV for medicinal purposes.

Article IV is amended by substituting the heading “Manufacture of distilled spirits, wines, and malt liquors,” and by adding to such article a new section to be designated “Section 33½” providing as follows:

Sec. 33½. Intoxicating malt liquors such as beer, ale, porter, malt extracts, and similar fermented malt liquors containing one-half of one per centum or more of alcohol by volume may be manufactured for medicinal purposes but only by a duly qualified brewer on brewery premises. In addition to qualifying, keeping records, making returns, and otherwise complying with internal-revenue laws and Regulations 6, revision 1918, heretofore issued such brewer before engaging in the business of manufacturing malt liquors must make application, Form 1404, and obtain permit to manufacture, Form 1405, as provided by Article III hereof. Such permit, however, shall

not be delivered until bond, Form 20, has been filed with and approved by the collector of internal revenue as provided by Regulations 6, which bond will be accepted in lieu of bond, Form 1408 or Form 1409. The proprietor of a dealcoholizing plant, industrial alcohol plant, or vinegar factory using the vaporizing process who is a manufacturer of cereal beverages or beverages containing less than one-half or one per centum of alcohol may not under such qualifications or permit manufacture intoxicating malt liquors for medicinal purposes. A duly qualified brewer obtaining permit as aforesaid may manufacture intoxicating malt liquors for sale for medicinal purposes and for transfer from the brewery premises either to a contiguous industrial alcohol plant for use as distilling material or to a dealcoholizing plant as provided by Article VI. The dealcoholizing or distilling of intoxicating malt liquors cannot be done on the premises described in the brewer's notice as the brewery premises. Industrial alcohol plants and dealcoholizing plants must be completely separated from the brewery premises, and if under the same roof such establishments or plant must be separated by a solid partition as provided by Regulations 6 as aforesaid. The removal of intoxicating malt liquors from the brewery premises to a contiguous industrial alcohol plant or dealcoholizing plant shall be in accordance with the provisions of Regulations 6, pages 34-36, inclusive, the quantity of liquors thus removed to be determined as therein provided and the necessary records kept as required by these regulations. Where the industrial alcohol plant, the dealcoholizing plant, and the brewery are operated by the same person, no permit to purchase, Form 1410a, covering such removals will be required unless transportation by carrier is involved.

(a) Liquids containing less than one-half of one per centum of alcohol by volume produced at industrial alcohol plants or dealcoholizing plants operated by the brewer may be returned to the brewery premises for manipulation by cooling, flavoring, carbonating, settling, and filtering in order to place same in a marketable condition as cereal beverages. The dealcoholized liquids thus returned to the brewery premises for manipulation must at all times be kept separate and distinct from the intoxicating malt liquors manufactured for medicinal purposes and in tanks, vats, or other containers designated and set apart exclusively for such purpose. When the process of manipulation is completed and the cereal beverage drawn off into kegs, barrels, or other bulk containers, such containers shall be immediately labeled as provided by Article VI of these regulations and T. D. 3084, and promptly removed from the place or places where intoxicating malt liquors are kept or in process of manufacture and stored in some separate room or building set aside and used exclusively for that purpose or removed entirely from the brewery premises.

(b) Intoxicating malt liquors may be sold by the brewer only in bottles and closed cases. Such liquors may not be bottled on brewery premises but must be bottled in brewer's bottling house as provided by Regulations 6. The brewer must make application, Form 1404,

furnish bond, Form 1408 or 1409, and procure permit, Form 1405, covering such bottling house. The application must fully describe such bottling house and any rooms or buildings used in connection therewith in which such liquors are stored pending sale or shipment. No permit to purchase, Form 1410a, will be required covering the removal of such liquors from the brewery premises to such bottling house unless transportation by carrier is involved. No intoxicating liquors can be purchased, procured, or received by the brewer under the permit covering the bottling plant other than the intoxicating malt liquors produced on the brewery premises. Record 52 need not be kept by the brewer covering transactions at the bottling house, but supplementary record 52 covering receipts and sales of intoxicating malt liquors shall be kept and transcripts forwarded to the director not later than the tenth of each month showing transactions during the preceding month. This record must be procured by the brewer at his own expense, but transcripts thereof may be obtained from the director. Sales of intoxicating malt liquors at such bottling house will involve the brewer in special tax liability as a wholesale dealer in malt liquors under section 3244, Revised Statutes, as amended.

21 (c) Intoxicating malt liquors manufactured on the brewery premises for sale for medicinal purposes and cereal beverages returned thereto for manipulation as above may be removed or conveyed by pipe line or otherwise to the bottling house for bottling, provided the removal and bottling of such liquors and beverages shall not be carried on at the same time and shall be under the supervision of a deputy or other officer designated and appointed for such purpose. Intoxicating malt liquors and cereal beverages shall not be allowed in the bottling room of the bottling house at the same time, and when such intoxicating malt liquors and cereal beverages have been bottled they shall be immediately removed from the bottling room of the bottling house at the same time, and when such intoxicating malt liquors and cereal beverages have been bottled they shall be immediately removed from the bottling room and kept in separate places of storage provided exclusively for such purpose. Intoxicating malt liquors shall at all times be kept on the premises designated in the permit covering the bottling house until removed pursuant to permit to purchase. Tax provided by section 608, revenue act of 1918, is due and payable on intoxicating malt liquors manufactured, removed, and sold under these regulations, and such tax shall be collected and paid in accordance with the provisions of Regulations 6.

(d) Any malt extracts containing one-half of one per cent or more of alcohol by volume, regardless of the quantity of extractive matter therein derived from malt, are held to be intoxicating liquors within the purview of the national prohibition act and regulations issued pursuant thereto. Any malt extract intended to be sold to the general public without prescription must contain less than one-half of one per cent of alcohol by volume and must be manufactured, tax paid, and sold in the same manner as other cereal beverages.

(e) The following label shall be placed on the bottle containing intoxicating malt liquors as soon as such liquors are bottled:

- (1) Name and address of the manufacturer.
- (2) Symbol and serial number of the permit covering the brewery premises.
- (3) Date of manufacture. (Date when removed from the brewery premises.)
- (4) Kind of intoxicating liquor contained in package, such as "beer," "ale," "porter," etc.
- (5) Quantity in wine gallons and the alcoholic content.
- (6) The following statement: "For medicinal purposes only. Sale or use for other purposes will cause heavy penalties to be inflicted."

Such label shall also be placed on each case containing such bottled liquors before the cases are removed to the place of storage. Before the case containing such liquors are removed, sold, shipped, or delivered the following additional label shall be placed thereon, or the information required thereby may be included in the label above:

- (1) Name of Manufacturer.
- (2) Kind, quantity in wine gallons, and alcoholic content.
- (3) Date of sale.
- (4) Name, address of consignor, and number of permit covering bottling house.
- (5) Name, address, and permit number of consignee.

Each bottle and case of cereal beverages bottled in the brewer's bottling house as herein provided must bear a label conforming to the requirements of Article VI, Regulations 60, as amended by T. D. 3084. These labels must be affixed immediately, upon bottling and casing the beverage. The labels above relating to intoxicating malt liquors are subject to all requirements of Article XVIII.

Article XII, section 69, subdivisions (b) and (c), as amended, are hereby further amended as follows:

(b) Alcoholic medicinal preparations fit for use for beverages purposes authorized to be manufactured by Article XI hereof, and other intoxicating liquors may be sold without a permit to purchase, Form 1410a, by a retail druggist who is a pharmacist duly licensed under the laws of his State to compound and dispense medicine or by a retail druggist through a pharmacist licensed as aforesaid, upon a physician's prescription, provided the data required by Article XII, including the name of the retail druggist, appears on the prescription in the physician's handwriting. A pharmacist is not permitted to refill any such prescription. Such pharmacist should refuse to fill any prescriptions for liquor if he has reason to believe that physicians are prescribing for other than medicinal uses or that a patient is securing through one or more physicians quantities of intoxicating liquor in excess of the amount necessary for medicinal purposes. No prescription shall be filled calling for a greater quantity of liquor than that authorized by these regulations and a pharmacist should refuse to fill any such prescription. Physicians may not prescribe liquor for their own personal use.

In every case where intoxicating liquor is sold on a physician's prescription, there must be affixed to the container thereof a label showing the following:

- 23 (1) Serial number of prescription (to be taken from the prescription blank).
(2) Name and address of the retail druggist.
(3) Name of the patient.
(4) Name of physician.
(5) Kind and quantity of intoxicating liquor and proof, if liquor is spirituous.
(6) Date prescription is filled.
(7) Directions for use.

Where bottles are removed from the case and packed or wrapped in a carton or other package, it will be sufficient to affix the label to the outside of such package.

(c) Every pharmacist filling a prescription for intoxicating liquor must, at the time of filling the same, indorse thereon over his signature the word "Cancelled," together with the date the liquor was delivered. A retail druggist must preserve in a separate carefully guarded file each prescription so filled.

Article XIII, section 77, and subdivisions (a) and (b) thereof are amended as follows:

Sec. 77. A physician who has filed application, Form 1404, and obtained permit to prescribe intoxicating liquor, as provided in Article III, may prescribe distilled spirits, wines, malt liquors, or such alcoholic medicinal preparations which are fit for use for beverage purposes as are authorized to be manufactured by section 60, for a person upon whom he is in attendance, if, after careful physical examination of such person, or in case in which such examination is impracticable, upon the best information obtainable, the physician believes that the internal or external use of such liquor as a medicine by such person is necessary and will afford relief to him from some known ailment. A physician who does not hold a permit to prescribe may not issue prescriptions for intoxicating liquors.

(a) No prescription may be issued for a greater quantity of intoxicating liquor than is necessary for use as a medicine by the person for whom prescribed in the treatment of an ailment from which such patient is known by the physician to be suffering. Not more than a pint of spirituous (distilled) liquor is administered to any person by any physician or physicians, as provided in section 71, the aggregate quantity so administered and the quantity prescribed for such person may not exceed one pint within any period of ten days. Not more than a pint of alcohol for external use may be prescribed for the same patient at one time. Not more than two

- quarts of wine or two and one-half gallons of intoxicating
24 malt liquors, to be taken internally, shall be prescribed at one time for use by the same person. Separate prescriptions shall be used for spirituous liquors, wines, and malt, liquors. Physicians are not permitted to write prescriptions for intoxicating liquors for their own use, or to use any liquor procured upon prescriptions

issued by them. Intoxicating liquors procured upon prescriptions may only be used for medicinal purposes by the person for whom prescribed and may not be sold or otherwise disposed of by them.

(b) Prescriptions for intoxicating liquor may only be filled by a licensed pharmacist who is also a retail druggist, or by a licensed pharmacist in the employ of a retail druggist. A pharmacist employed by any person other than a retail druggist may not fill prescriptions for intoxicating liquors. No prescription may be filled more than once. D. H. Blair, Commissioner of Internal Revenue.

Approved October 24, 1921: A. W. Mellon, Secretary of the Treasury.

25

Exhibit C to Amended Bill.

Treasury Department,
Bureau of Internal Revenue,
Washington.

Office of Federal Prohibition Commissioner.

Pro. Counsel OVE.

James Everard's Breweries, 12 East 133rd St., New York, N. Y.

GENTLEMEN: Representatives of your brewery have visited this office and made inquiry in regard to the production of cereal beverages, by checked fermentation, on the premises of a brewery, concurrently with the production of malt liquor for medicinal purposes. Inquiry is also made as to whether or not old beer labels now on hand may be used, although not rectangular in shape, provided they contain the exact data prescribed in Treasury Decision 3239.

In regard to this matter, you are informed that if the entire industrial alcohol plant, or dealcoholizing plant, is converted into a brewery, by giving the brewer's notice on Form 27-c and bond on Form 20, through the collector of internal revenue, and two permits are procured through the Federal Prohibition Director, covering the brewery premises and the bottling house, credit may be taken on the records of the industrial alcohol plant, or dealcoholizing plant, as the case may be provided the dealcoholizing or distilling is to be completely abandoned, and the beer thus transferred to the brewery premises may be debited on the brewer's record 104. In such case, the brewer's monthly return, Form 18, should show the quantity of beer transferred and a red ink notation should be made thereon showing the source of the beer.

After qualifying as above indicated, and transferring the malt liquor, such liquor may be sold to duly qualified permittees for medicinal purposes, and be shipped pursuant to permits to purchase Form 1410-A. There must be strict compliance with the requirements of the provisions of Treasury Decision 3239, in all other respects as well as Regulations 6.

In case the brewery is thus established, and it is desired to manufacture both medicinal malt liquor and cereal beverages, by checked fermentation, the same may be accomplished in the following manner: The mashing and brewing may be done concurrently, but the wort to be converted into cereal beverages, by checked fermentation

26 must be set aside and kept separate throughout the various processes of manufacture until completed, and no part of the wort may be mixed with the fermented malt liquor for the purpose of attenuating it, and wort for conversion into cereal beverages may not be *kreuzened* with fermented malt liquor. It will also be distinctly understood that no portion of the wort thus set aside for conversion into cereal beverages may at any time, during the processes of manufacture, contain as much as one-half of one per cent of alcohol by volume.

The old labels for beverage malt liquor which you now have on hand may be used on medicinal malt liquor, provided they contain all the data prescribed in T. D. 3239, although the shape thereof is not rectangular, as provided by said Treasury Decision. This permission is granted on the condition that no more labels are printed or used which do not conform to the requirements of the regulations as to the shape thereof.

A brewer thus qualified for the purpose of producing concurrently medicinal malt liquor and cereal beverages, by checked fermentation, on the brewery premises may not dealcoholize and waste the alcohol, or distill and save the alcohol on such brewery premises. If there be any stills or dealcoholizing apparatus on the premises when thus converted into a brewery, this office will not at this time insist upon removal of the apparatus, provided the use thereof for the purpose for which intended is effectually prevented by attachment of Government locks, or partial dismantling to accomplish the purpose.

Copies of this letter will be furnished the Collector of Internal Revenue for your District and the Federal Prohibition Director of your State. Respectfully, R. A. Haynes, Prohibition Commission.
Rec.

27

Exhibit D to Amended Bill.

Serial No. N. Y. -A.-97.

Treasury Department,

United States Internal Revenue.

*Permit Issued under the National Prohibition Act and Regulations
Issued Thereunder.*

Penal sum of bond \$25,000.00.

Dated 11/2/21.

36-23441.

Office of Federal Prohibition Commissioner,
Washington, D. C.

To James Everard's Breweries, Inc., Dan'l M. Tracy, 6-12 East 134th St., New York, New York:

Applications having been duly presented and approved, you are hereby authorized and permitted to receive intoxicating malt liquors, such as beer, ale, porter, malt extracts and similar fermented malt liquors, containing one-half of one percent or more of alcohol, for bottling purposes, in accordance with Treasury Decision 3239.

All liquors must be manufactured by the brewery operating under permit bearing serial No. N/Y.)-A-98.

This permit is effective from the date hereof, and will remain in force until December 31, 1922, unless revoked or renewed as provided by law or regulations.

This permit is granted under the conditions that the provisions of National Prohibition Act and Regulations issued thereunder will be strictly observed.

Dated this November 15, 1921. James E. Jones, Acting Prohibition Commissioner."

28

Exhibit E to Amended Bill.

(Copy.)

Serial No. N.-Y-A-98.

"Treasury Department,
United States Internal Revenue.

*Permit Issued under the National Prohibition Act and Regulations
Issued Thereunder.*

Penal sum of bond \$25,000.00.

Dated 11/2/21.

36-23441.

Office of Federal Prohibition Commissioner,
Washington, D. C.

To James Everard's Breweries, Inc., Daniel M. Tracy, 10-28 East 133rd St. and 7-15 East 132nd St., New York, New York:

Application having been duly presented and approved, you are hereby authorized and permitted to manufacture intoxicating malt liquors, such as beer, ale, porter, malt liquors to wit: In accordance

with Regulations 6 and 60, Article IV, Section 33½ and Treasury Decision 3239.

All intoxicating liquors manufactured under this permit are for sale only in bottles and closed cases for medicinal purposes and cannot be sold except as prescribed in Treasury Decision 3239.

This permit is effective from the date hereof, and will remain in force until December 31, 1922, unless revoked or renewed as provided by law or regulations.

This permit is granted under the conditions that the provisions of National Prohibition Act and Regulations issued thereunder will be strictly observed.

Dated this November 15, 1921. James E. Jones, Acting Prohibition Commr."

29

Exhibit F to Amended Bill.

(68th Congress.—H. R. 7294.)

An Act Supplemental to the National Prohibition Act.

Sec. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "person," "commissioner," "application," "permit," "regulation," and "liquor," and the phrase "intoxicating liquor," when used in this Act, shall have the same meaning as they have in Title II of the National Prohibition Act.

Sec. 2. That only spirituous and vinous liquor may be prescribed for medicinal purposes, and all permits to prescribe and prescriptions for any other liquor shall be void. No physician shall prescribe, nor shall any person sell or furnish on any prescription, any vinous liquor that contains more than 24 per centum of alcohol by volume, nor shall any physician issue more than that number of prescriptions than one-fourth of one gallon of vinous liquor, or any such vinous or spirituous liquor that contains separately or in the aggregate more than one-half pint of alcohol, for use by any person within any period of ten days. No physician shall be furnished with more than one hundred prescription blanks for use in any period of ninety days, nor shall anyone prescribe or sell or furnish on any prescription more within any such period unless on application therefor he shall make it clearly apparent to the commissioner that for some extraordinary reason a larger amount is necessary, whereupon the necessary additional blanks may be furnished him. But this provision shall not be construed to limit the sale of any article the manufacture of which is authorized under section 4, Title II, of the National Prohibition Act.

If the commission shall find after hearing, upon notice as required in section 5, Title II, of the National Prohibition Act, that any article enumerated in subdivisions *b*, *c*, *d*, or *e* of section 4 of Title II of said National Prohibition Act is being used as a beverage, or for intoxicating beverage purposes, he may require a change of formula of such article and in the event that such change is not made within a time to be named by the commissioner he may cancel the permit for the

manufacture of such article unless it is made clearly to appear to the commissioner that such use can only occur in rare and exceptional instances, but such action of the commissioner may by appropriate proceedings in a court of equity be reviewed, as provided for in section 5, Title II, of said National Prohibition Act; Provided, That no change of formula shall be required and no permit to manufacture any article under subdivision (c), Section 4, Title II, of the National Prohibition Act shall be revoked unless the sale or use of such article is substantially increased in the community by reason of its use as a beverage or for intoxicating beverage purposes.

No spirituous liquor shall be imported into the United States, nor shall any permit be granted authorizing the manufacture of any spirituous liquor, save alcohol, until the amount of such liquor now in distilleries or other bonded warehouses shall have been reduced to a quantity that in the opinion of the commissioner will, with liquor that may thereafter be manufactured and imported, be sufficient to supply the current need thereafter for all non-beverage uses; Provided That no vinous liquor shall be imported into the United States unless it is made to appear to the commissioner that vinous liquor for such non-beverage use produced in the United States is not sufficient to meet such nonbeverage needs; Provided further, That this provision against importation shall not apply to shipments en route to the United States at the time of the passage of this Act; And provided further, That the commissioner may authorize the return to the United States under such regulations and conditions as he may prescribe any distilled spirits of American production exported free of tax and reimported in original packages in which exported and consigned for redeposit in the distillery bonded warehouse from which originally removed.

Sec. 3. That this Act and the National Prohibition Act shall apply not only to the United States but to all territory subject to its jurisdiction, including the Territory of Hawaii and the Virgin Islands; and jurisdiction is conferred on the courts of the Territory of Hawaii and the Virgin Islands to enforce this Act and the National Prohibition Act in such territory and islands.

Sec. 4. That regulations may be made by the commissioner to carry into effect the provisions of this Act. Any person who violates any of the provisions of this Act shall be subject to the penalties provided for in the National Prohibition Act.

Sec. 5. That all laws in regard to the manufacture and taxation of any traffic in intoxicating liquor, and all penalties for violations of such laws that were in force when the National Prohibition Act was enacted, shall be and continue in force, as to both beverage and non-beverage liquor, except such provisions of such laws as are directly in conflict with any provision of the National Prohibition Act or of this Act; but if any act is a violation of any of such laws and also of the National Prohibition Act or of this Act, a conviction for such act or offense under one shall be a bar to prosecution therefor under the other. All taxes and tax penalties provided for in section 35 of Title II of the National Prohibition Act shall be assessed and collected in

the same manner and by the same procedure as other taxes on the manufacture of or traffic in liquor.

If distilled spirits upon which the internal-revenue tax has not been paid are lost by theft, accidental fire, or other casualty while in possession of a common carrier subject to the Transportation Act of 1920 or the Merchant Marine Act, 1920, or if lost by theft from a distillery or other bonded warehouse, and shall be made to appear to the commissioner that such losses did not occur as a result of negligence, connivance, collusion, or fraud on the part of the owner or person legally accountable for such distilled spirits, no tax shall be assessed or collected upon the distilled spirits so lost, nor shall any tax penalty be imposed or collected by reason of such loss, but the exemption from the tax and penalty shall only be allowed to the

31 & 32 extent that the claimant is not indemnified against or recompensed for such loss. This provision shall apply to any claim for taxes or tax penalties that may have accrued since the passage of the National Prohibition Act or that may accrue hereafter. Nothing in this section shall be construed as in any manner limiting or restricting the provisions of Title III of the National Prohibition Act.

Sec. 6. That any officer, agent, or employee of the United States engaged in the enforcement of this Act, or the National Prohibition Act, or any other law of the United States, who shall search any private dwelling as defined in the National Prohibition Act, and occupied as such dwellings, without a warrant directing such search, or who while so engaged shall without a search warrant maliciously and without reasonable cause search any other building or property, shall be guilty of a misdemeanor and upon conviction thereof shall be fined for a first offense not more than \$1,000, and for a subsequent offense not more than \$1,000 or imprisonment not more than one year, or both such fine and imprisonment.

Whoever not being an officer, agent, or employee of the United States shall falsely represent himself to be such officer, agent, or employee and in such assumed character shall arrest or detain any person, or shall in any manner search the person, buildings, or other property of any person, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or imprisoned for not more than one year, or by both such fine and imprisonment.

UNITED STATES OF AMERICA,
State and County of New York, ss:

Robert Hilliard, being first duly sworn, deposes and says:

I am the President of James Everard's Breweries, the complainant corporation above named, I have read the foregoing amended bill of complaint, and know the contents thereof, and the same is true of my own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true. Robert Hilliard.

Subscribed and sworn to before me this 24th day of January, 1922. Nathan Ballin, Notary Public, Kings County. Certificate filed N. Y. and Bronx Counties. Kings Co. Clerk's No. 83, Register's No. 2068. N. Y. Co. Clerk's No. 92, Register's No. 2029. Bronx Co. Clerk's No. 1, Register's No. 2201. Commission expires March 30, 1922.

33 [File endorsement omitted.]

34 At a Stated Term of the U. S. District Court of the Southern District of New York Held at the Court-house, in the Federal Building, on the 25th Day of January, 1922.

Present: Honorable Julian W. Mack, Judge.

[Title omitted.]

Order Amending Amended Bill.

Upon reading and filing the annexed stipulation for the amendment of the title of this action by striking out the "H" in the name of William H. Hayward, and by adding as a party defendant, David H. Blair, as Commissioner of Internal Revenue, it is

Ordered, that the amended complaint to be filed shall contain such correction and addition, and that all further papers in this action may contain the title so corrected and amended accordingly. Julian W. Mack, U. S. C. J.

35 United States District Court, Southern District of New York.

[Title omitted.]

Stipulation for Addition of David H. Blair as Party Defendant.

It is hereby stipulated and consented that there shall be added as a fourth defendant to this action, David H. Blair as Commissioner of Internal Revenue, and that an order be drawn by the Complainant's solicitors consenting that said additional defendant be added in the amended complaint, and that authority will be requested by the United States Attorney to appear for him, a consent to the entry of said order to be annexed thereto.

It is further consented that the Complainant may serve duplicates of such affidavits of physicians as Complainant may select as part of the papers to be served on the new motion for injunction to be made herein, entitled in this action, said duplicates being copies of original affidavits filed in the United States District Court, Eastern District of New York, in the case of Piel Brothers against Day and others, without the necessity for the re-verification of such affidavits, and that such duplicates entitled in this action shall be regarded with the same force and effect as if the same were re-verified herein, and that either side may use in the temporary injunction any parts of the Congressional Record of the testimony before the Committee of

Congress as though the statements contained were in affidavit form. (Sgd.) Olcott, Bonyng, McManus & Ernst, Solicitors for the Complainant. (Sgd.) William Hayward, U. S. Attorneys, Solicitor for the Defendants.

O. K. J. H. C.

36 United States District Court, Southern District of New York.

[Title omitted.]

Motion to Dismiss.

Ralph A. Day, Federal Prohibition Director for the State of New York; Frank K. Bowers, Collector of Internal Revenue for the Second District of New York; William Hayward U. S. Attorney for the Southern District of New York, and David H. Blair, as Commissioner of Internal Revenue, named as defendants in the above entitled action and sued herein, in their respective official capacities as above set forth, move that the bill of complaint and divers petitions thereof be dismissed and assign the following grounds for this motion; namely,

First. The bill of complaint does not present a cause of action in equity under the Constitution of the United States.

Second. The bill of complaint does not disclose a cause of action equitable in its nature, civil in its character and arising under the Constitution of the United States.

Third. The facts alleged in the bill of complaint are insufficient to constitute a valid cause of action in equity.

Fourth. It appears from the bill of complaint that the complainant has a plain, adequate and complete remedy at law.

Wherefore, these defendants say that they should not be held to answer to the bill of complaint or to the several allegations thereof above referred to, but that said bill should be dismissed and said several allegations should be stricken therefrom, with costs to these defendants. William Hayward, U. S. Attorney for the Southern District of N. Y. — — —, Solicitor pro se and for Defendants Day and Bowers.

38 United States District Court, Southern District of New York

[Title omitted.]

Notice of Motion for Preliminary Injunction.

Sirs: Please take notice that upon the amended bill of complaint duly filed herein, and upon the various affidavits of physicians, copies of which will be served upon the United States Attorney prior to the argument of the motion herein, the right to serve which is expressly reserved, we shall move this Honorable Court at a Stated Term thereof

for the hearing of motions, to be held in the Federal Building, Borough of Manhattan, City of New York, on the 3rd day of February, 1922, at 10 A. M., or as soon thereafter as counsel can be heard for an order granting a preliminary injunction pending the hearing and determination of this action, as prayed for in the amended bill of complaint, and for such other and further relief as to this Court may seem just and proper in the premises.

Dated, New York, January 30th, 1922. Olcott, Bonyng, McManus & Ernst, Solicitors for the Complainant, 170 Broadway, Borough of Manhattan, New York City.

To: Ralph A. Day, Federal Prohibition Director for the State of New York; Frank K. Bowers, Collector of Internal Revenue for the Second District of New York; William Hayward, United States Attorney; David H. Blair, as Commissioner of Internal Revenue.

39 [Title omitted.]

40 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of Bryan De Forrest Sheedy.

STATE OF NEW YORK,
City of New York,
County of New York, ss:

Bryan De Forrest Sheedy being duly sworn, deposes and says: I reside at 170 West 73rd Street, New York City, New York. I graduated from the New York University Medical College in the year 1885 and became a licensed practitioner of the State of New York in the same year and have practiced general or special medicine until the present time. For upward of fifteen years I was engaged in the general practice of medicine and for the last twenty years of my professional career have specialized in ear, nose and throat

work, for which specialty I qualified in the clinics of Vienna, Berlin and London. I was an instructor at the New York Post Graduate Medical School and Hospital, Second Avenue and Twentieth Street, in the City of New York, for more than twenty-five years and for several years a Professor of nose and throat diseases in the Fordham Medical College, and during all this time did regular Hospital work.

In the course of my practice I have had frequent occasion to prescribe and recommend spirituous, vinous and fermented liquors to my patients, but have far greater use of malt tonics and beer, containing a small per cent of alcohol, than of spirituous and vinous liquors and while it is impossible for me to state the exact number of such prescriptions and recommendations would say they were very numerous during the past thirty-five years.

I have found beer and ale particularly useful and beneficial in the feeble, aged and worn-out who required a pick-up at the end of the day, or easily digested nourishment at bed-time. Beer is a very valuable remedial agent in cases of convalescence from pneumonia and other diseases that seriously impair strength and vigor and in cases of exhaustion from over-work and worry or following shoe and disability in dangerous and serious operations. I frequently prescribe small doses of dark beer as a stomach tonic for mal-nourished and rickety children and for that large class of poor little sufferers due to defective digestion. In the wasted condition following typhoid fever or suppurating bone diseases and in the weakened and exhausted tubercular patient requiring easily assimilated food, and particularly in cases in which there was con-

42 tinuously more or less pus in the circulation, I depended upon malt beer and ale preparations as a food and tonic.

I know of no remedy in the pharmacop-eia equal to good malt liquors, beer and ale for the poor, over-worked mother of several children, with another hanging at her breast, for the life-giving fluids. There is no remedy equally good for the sustaining of the normal milk supply so necessary to the health of the little ones, and in the convalescence from child-bed with its long period of lactation there is no agent in the hands of the profession that will do as much for the benefit of the mother and child as good beer.

In the prolonged suppurating lung condition of tubercular patients I have seen the greatest possible benefit come from the nourishing and tonic qualities of beer.

I have found beer to be clean, wholesome and nutritious and containing, in the good beers, over ten per cent of essential and valuable food-stuffs (carbo-hydrates and proteins) in a very easily digested and beneficial form ready for assimilation. The hop derivatives of good beer exert a tonic action on the stomach and intestines, aid digestion and encourage sleep. In certain forms of stomach dyspepsia and in the intestinal variety of dyspepsia associated with nervous debility, especially in the over-worked and mentally-tired business man, suffering from over-exertion, good beer is an invaluable food and correcting agent and acts through directly nourishing the nervous centers.

I have found good beer a very valuable and beneficial remedy in sleeplessness associated with over-work and worry and preferred it throughout the most of my professional life to the drugs or
43 dinarily used for sleeplessness. My doses have varied from a teaspoonful for under-nourished children, before meals, to a glass or small bottle for the aged and feeble man or woman as a night cap before retiring, thus furnishing not only nourishment but much-desired rest and sleep, and in the emaciated and exhausted, during wasting diseases, or in tuberculosis, from one to three bottles a day, depending upon the effect.

I unhesitatingly pronounce good beer an invaluable tonic in and of itself but way and beyond its actual food value I recommend it for its stimulating and tonic effect on the stomach and intestinal secretions thus assisting in the digestion of food and the develop-

ment of energy and heat in all forms of convalescence, especially in mental and nervous exhaustion and as a soporific to the aged, feeble and worn-out and as a gland and body-builder in wasted physical conditions. I have prescribed beer in innumerable cases to the entire satisfaction of my patients and the therapeutic and nutritional results have been most satisfactory to myself, especially knowing that there were none of the habits developed that frequently follow drug medication. (Signed) Bryan D. Sheedy.

Sworn to before me this 20th day of December, 1921. (Sgd.) Nathan Ballin, Notary Public, etc.

44 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of Maurice J. Lewi.

STATE OF NEW YORK,

County of New York, ss:

Maurice J. Lewi, being duly sworn, deposes and says:

I am a duly licensed physician and surgeon in the State of New York, and have practised for a great many years, but am not at present engaged in active practice, as my professional work is now that of consultant. I reside at the Sherman Square Hotel in the Borough of Manhattan, New York City.

I was born in Albany, New York, on December 1st, 1857, and am a graduate of Albany Medical College of the class of 1877.
45 Subsequently I took post-graduate studies in the Universities of Vienna and Heidelberg, and returned to the United States about 1880, when I was duly licensed to practice medicine in the State of New York. Thereafter, I was engaged for many years in general practice, and was a lecturer in the Albany Medical College, and later Professor of Medical Jurisprudence in the Albany Law School. From 1891 to 1912 I was Secretary of the New York State Board of Medical Examiners.

I am now medical consultant of H. A. Metz Laboratories, Inc., a large chemical manufacturing corporation, and am also the President of the First Institute of Podiatry, and likewise President of the Foot Clinics of New York.

I have been asked to express an opinion as to the therapeutic efficacy of beer based upon my practical experience of over forty (40) years. I desire to state that from my medical reading, I know that many text book writers recommend beer and malt liquors generally, as an aid to digestion, and I, as a practicing physician, have found that, in some instances, when prescribed and used in moderation, beer and ale increase the appetite and stimulate the gastric secretion. I am of the opinion that it would be a great detriment to physicians who have been accustomed to prescribe malt liquors and malt extracts for their patients, to be deprived of this

right, and that the limitation to prescriptions of vinous and spirituous liquors is unwise, because, in many instances, these latter liquors do not answer the purpose, which are afforded by the nutritive properties of malt and hops, as contained in beer, ale and stout.

46 In many instances, patients have been benefitted, and much strengthened by the judicious use of malt liquors, and it is a hardship, in such cases, to prevent the attending physician from continuing the prescription of such malt liquors.

I am emphatically of the opinion that a great injustice is done, not only to the physician, but also to the patient, in such instances, as the patient has been accustomed to the moderate use of malt liquors, and the system has been enured to it, and the deprivation by the denial of the right to prescribe, will undoubtedly work a hardship in these cases. Maurice J. Lewi.

Sworn to before me this 20th day of December, 1921. Nathan Ballin, Notary Public, Etc.

47 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of A. O. Gettler.

STATE OF NEW YORK,
City of New York,
County of New York, ss:

A. O. Gettler, being duly sworn, deposes and says:

I reside at 115 Penn Street, Brooklyn, with offices at 400 East 29th Street, New York City, N. Y. I am a graduate of Columbia University in the Department of Chemistry with the degree of Ph. D.

I am Associate Professor of Chemistry in the University and Bellevue Hospital Medical College (Medical Department of New York University), Pathological Chemist of Bellevue Hospital; and Toxologist to the Chief Medical Examiner of the City of New York.

48 I have, from time to time, made biological and medical analyses of beer such as produced prior to prohibition.

I have found beer, upon chemical and biological analyses, to be a wholesome beverage. A well-made beer is healthful, clean and non-toxic. It is manufactured from the best of barley, hops and yeast. Food-stuffs, essential carbohydrates and proteins are contained in the barley. The hops (plant origin) contain the flavoring and extractives. The yeast is added for the conversion of the starch into sugars and the production of alcohol and of carbon dioxide gas, which gas gives to the beer its froth and sparkle. The following is an analysis which may be accepted as a standard for beers produced prior to prohibition:

Composition of Beer Before Prohibition.

Water	87 to 91%
Alcohol	3 to 6%
Nitrogenous substances.....	0.6 to 0.8%
Extractives	5 to 7%
Sugars	0.9 to 2.6%
Dextrine, etc.....	2 to 4%
Lactic Acid.....	0.2 to 0.4%
Glycerine	0.1 to 0.2%
Inorganic Salts.....	0.3 to 0.5%
Carbon Dioxide.....	0.2 to 0.3%
Vitamines	Present (amount undetermined).

The chemical analysis of beer reveals the presence of valuable food-stuffs, so that in partaking of same, it not only serves to quench the thirst, but, unknowingly, the participant obtains very valuable materials which the body uses for building up tissues and for producing energy and heat. The alcohol in beer (3 to 6%) is so dilute that it is not toxic to the organism. On the contrary, it has been experimentally proven that it is an energy-producing substance as well as a tonic.

Such beer also contains vitamins. Their origin has been traced to the yeast. These vitamins, discovered only a few years ago, are gaining more prominence as scientific investigation proceeds. The constitution of these vitamins is still unknown. They are organic substances found in certain foods which are essential to life. Their absence from our dietary brings on pathological conditions such as neuritis, beri-beri, rickets, xerophthalmia and scurvy. Yeast is one of the sources of these vitamins, and, in brewing, they are transferred, by diffusion, to the beer, imparting to beer a most valuable property. Alexander O. Gettler, M. D.

Sworn to before me this 21st day of December, 1921. Nathan Ballin, Notary Public, etc.

United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of Armin V. St. George.

STATE OF NEW YORK,
City of New York,
County of New York, ss:

Armin St. George, being duly sworn, deposes and says:

My residence and office are at #59 West 54th Street, New York City. I am a graduate of Columbia University—of the College of Pharmacy (Ph. C., 1910:—Pharmaceutical Chemist) and of the

College of Physicians and Surgeons (M. D., 1914) and an Assistant Director of Laboratories of the Bellevue and Allied Hospitals of New York City.

Before and since Prohibition, I have given the study of alcoholics in the practice of medicine great attention and frequent consideration. Beers, comprising lager, ale, porter, stout, malt tonics, etc., as formerly brewed, I have examined by analysis and have valued in the light of scientific knowledge and current practice.

Without reserve, I pronounce pure, well-made barley, malt and hop beers as very valuable medical adjuvants, which, in frequent instances of the daily practice of physicians, in general and special fields, are indispensable and without equally efficacious substitutes. I bear testimony to this from professional experience, both of myself and large numbers of my colleagues.

Until prohibition was enacted the benefit to be derived by the use of malt liquors in medical practice was universally held to be axiomatic. Since the abolition of that use by legislators, the absence of beer has left the physician helpless in many instances, such as in certain conditions in lactation, and has greatly handicapped him, to the detriment of the patient, in convalescence and in many debilities.

I am familiar with the writings of authorities in my profession and their evaluation of the therapeutic value of alcohol, including fermented malt liquors. My personal experience and that of colleagues bears out fully the values placed upon beer by them. Specifically I refer to the following authorities and literature now citing such publications by them as contain their evaluation of alcohol, and of beers as therapeutic agents:

52 Abraham Jacobi, M. D., L. L. D., M. A. The "Nestor of American Medicine."—The Medical Economist; July, 1918.

William Osler, M. D., L. L. D. Regius Professor of Medicine, Oxford University Fellow of the Royal College of Physicians, London. Honorary Professor of Medicine, John Hopkins Hospital, Baltimore. Etc.—The Principles and Practice of Medicine, 1906.

William Edward Fitch, M. D. Major, Med. Reserve Corps, U. S. A. Formerly Lecturer on Surgery, Fordham University of Medicine. Assistant Attending Gynecologist, Presbyterian Hospital Dispensary, New York, Attending Physician, Vanderbilt Clinic, College of P. & S., New York.—Dietotherapy,—published by permission of Surgeon General of the U. S. 1918 (and 40 contributors).

Julius Friedenwald, M. D., Professor of Gastro-Enterology. College of P. & S., Baltimore.

John Ruhrah, M. D. Professor of Children's Diseases, College of P. & S., Baltimore.—Diet in Health and Disease, 1917.

Louis Fischer, M. D. Pediatricist to Zion Hospital, Suydenham Hospital, N. Y. Etc.—Diseases of Infancy and Childhood. 1914.

Charles Gilmore Kerley, M. D. Professor of Diseases of Children, N. Y. Polyclinic School and Hospital. Attending Physician to the N. Y. Nursery and Child's Hospital. Etc.—The Practice of Pediatrics, 1918.

53 Charles Hunter Dunn, M. D. Instructor in Pediatrics, Harvard. Physician-in-Chief at the Infant's Hospital, Etc.—Pediatrics, the Hygienic and Medical Treatment of Children. 1917.

L. Emmett Holt, M. D., Sc. D., L. L. D. Professor of Diseases of Childhood, College of P. & S., N. Y. Attending Physician to the Babies' and Foundling Hospital, Etc.

John Howland, A. M., M. D. Professor of Pediatrics in Johns Hopkins University, Baltimore. Pediatrician-in-Chief to Johns Hopkins Hospital. Etc.—The Diseases of Infancy and Childhood. 1916.

Arthur R. Cushny, M. D., L. L. D., F. R. S. Professor of Pharmacology, University of London. Examiner in University of London, Manchester, Oxford, Cambridge, Glasgow, Leeds. Etc.—A Text-book of Pharmacology and Therapeutics. 1918.

Benjamin Knox Rachford, M. D. Professor of Diseases of Children, Ohio Miami College, department of medicine of the University of Cincinnati. Pediatrician to the Cincinnati Hospital. Ex-President of the American Pediatric Society. Etc.—Diseases of Children. 1912.

Chalmers Watson, M. D., F. R. C. P. S. Assistant Physician, Royal Infirmary, Edinburgh. Editor, Encyclopedia Medica. Etc.—Food and Feeding in Health and Disease. 1913.

54 Robert Hutchinson, M. D., F. R. C. P. Edin. Physician to the London Hospital. Physician to the Hospital for Sick Children, London.—Food: the Principles of Dietetics. 1917.

Robert F. Williams, M. A., M. D. Professor of Practice of Medicine in Medical College of Virginia. Etc.—Food and Diet in Health and Disease. 1906.

A. A. Stevens, A. M., M. D. Professor of Therapeutics and Clinical Medicine, Women's College of Penna. Lecturer of Physical Diagnosis in the Univ. of Penna. Etc.—Materia Medica and Therapeutics. 1909.

William Tibbles, M. D., L. L. D., L. R. C. P., etc. Medical officer of Health, Fellow of the Royal Institute of Public Health, London. Etc.—Dietetics, or Food in Health and Disease. 1914.

A. Langdon Brown, M. D., F. R. C. P. Assistant Physician to St. Bartholomew's Hospital. Physician to the Metropolitan London. Etc.

Keough Murphy, M. C., F. R. C. S. Surgeon to the Miller General Hospital for Southeast London. Surgeon to Paddington Green Children's Hospital. Etc.—Encyclopædia of Medical Treatment. 1915.

—Medical Brief, St. Louis, July, 1918.

55 Daniel M. Hoyt, M. D. Formerly Instructor in Therapeutics, University of Pennsylvania. Assistant Physician to the Philadelphia General Hospital.—Practical Therapeutics. 1914.

Hobart Amory Hare, M. D., B. Sc. Professor of Therapeutics and Materia Medica in the Jefferson Medical College of Philadelphia. Physician to the Jefferson Medical College Hospital. Etc.—Practical Therapeutics. 1916.

A. A. Brill, Ph. B., M. D., Assistant Professor of Psychiatry, New York Post Graduate Medical School and Hospital. Lecturer on Abnormal Psychology, New York University. Etc.—Miscellaneous writings. 1918.

Charles E. De M. Sajous, M. D., Professor of Therapeutics in the Temple University of Pennsylvania. Formerly Professor in the Medico-Chirurgical College and Clinical Lecturer in Jefferson Medical College. Etc.—Analytical Cyclopedia of Practical Medicine. 1907.—and 100 associate editors.

Rakhaldas Ghoar, L. M. S. Lecturer on Materia Medica, Calcutta Medical School.

B. H. Daare, Lieutenant-Colonel India Medical Service, Professor of Materia Medica and Clinical Medicine, Medical College of Bengal. Physician to the College Hospital; Fellow of the University of Calcutta. Etc.

56 Birendra Nate Ghosh, F. R. F. P. S., Lecturer of Pharmacology. College of Physicians and Surgeons of Bengal. Fellow of the Royal Society of Medicine.—Materia Medica and Therapeutics. 1916.

Alfred C. Croftan, M. D., Author of Clinical Crology.—Clinical Therapeutics. 1910.

George F. Butler, A. M., Ph. G., M. D., Professor and Head of the Department of Therapeutics and Professor of Preventive and Clinical Medicine, Chicago College of Medicine and Surgery. Medical Department, Valparaiso University. Etc.—Materia Medica, Pharmacology and Therapeutics. 1908.

H. Edward Lewis, M. D. Editor of American Medicine. Formerly Instructor in Chemistry and Dietetics. Fanny Allen Hospital Training School for Nurses. Formerly Attending Physician New York Nose, Throat and Lung Hospital. Etc.—Diet for the Sick. 1916.

Walter A. Bastedo, Ph. G., M. D. Assistant Professor of Clinical Medicine, Columbia University. Associate Attending Physician, St. Luke's Hospital, New York. Attending Physician, City Hospital, New York. Formerly Curator New York Botanical Garden. Etc.—Materia Medica and Pharmacology. 1918.

Louis Kolifinski, M. D., Washington, D. C.—“New York Medical News,” Oct. 5, 1901.

57 Paul Bartholow, A. B., M. D. Professor Emeritus of Materia Medica, General Therapeutics, and Hygiene, Jefferson Medical College of Philadelphia. Formerly Professor of Materia Medica and Therapeutics and the Practice of Medicine in the Medical College of Ohio. Etc.—Materia Medica and Therapeutics. 1906.

John William Springthorpe, M. A., M. D., N. E. C. P. Senior Physician to the Melbourne Australian Hospital. Lecturer on Therapeutics, Dietetics and Hygiene, and Dean of the Faculty of Dentistry in the University of Melbourne. Etc.—Therapeutics, Dietetics and Hygiene. 1914.

W. Hale White, M. D., Lieutenant Colonel, R. A. M. C. Senior Physician and Lecturer on Medicine at Guy Hospital. Editor of

"A Textbook on Pharmacy and Therapeutics." Etc.—*Materia Medica, Pharmacy, Pharmacology and Therapeutics.* 1916.

I. Burney Yeo, M. D., F. R. C. P. Emeritus Professor of Medicine in King's College. Consulting Physician to King's College Hospital. Etc.

E. Farquhar Buzzard, M. A., M. D., F. R. C. P. Physician for out-Patients to St. Thomas Hospital and to the National Hospital for the Paralyzed and Epileptic. Etc.—*Medical Treatment and Therapeutics.* 1913.

58 Reynold Webb Wilcox, M. A., M. D., L. L. D., D. C. L. President of the American College of Physicians. Retired Professor of Medicine of the New York Post Graduate Medical School and Hospital. Formerly President of the Association of the Medical Reserve Corps, United States Army. Etc.—*Materia Medica and Therapeutics.* 1917.

D. H. Borgey, A. M., M. D., D. F. H. Assistant Professor of Hygiene and Bacteriology, University of Pennsylvania. Etc.—*Principles of Hygiene,* 1918.

Torald Sollman, M. D., Professor Pharmacology and *Materia Medica* in the School of Medicine of Western Reserve University, Cleveland, Ohio.—*Pharmacology, Therapeutics and Toxicology.* 1917.

Horatio C. Wood, M. D., L. L. D. Emeritus Professor of *Materia Medica and Therapeutics* in the University of Pennsylvania. Etc.

Horatio C. Wood, Jr., M. D. Associate Professor of Pharmacology in the University of Pennsylvania. Etc.—Assistant Physician to the Philadelphia General Hospital. Etc.—*Therapeutics.* 1908.

Charles A. Orr, A. M., M. D., Crafton, Pa.—*Materia Medica and Therapeutics.*

59 Oliver T. Osborne, A. M., M. B. Professor of *Materia Medica, Therapeutics and Clinical Medicine* in Yale Medical School. Ex-Chairman of the section on Pharmacology and Therapeutics of the American Medical Association. Etc.—*Handbook of Therapy.* 1910.

George Sheever Shattuck, M. D., Assistant Physician to the Massachusetts Hospital. Etc.—*Principles of Medical Treatment.* 1916.

Samuel L. Potter, A. M., M. D., M. R. C. P., London. Formerly Professor of the Principles and Practice of Medicine in the Cooper Medical College of San Francisco. Late Major and Surgeon of Volunteers, United States Army. Etc.

Elmer H. Funk, M. D. Associate in Medicine. Jefferson Medical College, Philadelphia. Assistant Physician to the Philadelphia Hospital. Etc.—*Therapeutics, Materia Medica and Pharmacy.* 1917.

John V. Shoemaker, M. D., L. L. D. Professor of *Materia Medica, Pharmacology, Therapeutics and Clinical Medicine,* and Clinical Professor of Diseases of the Skin in the Medico-Chirurgical College of Pennsylvania. Etc.—*Materia Medica and Therapeutics.* 1908.

John H. Mussner, Jr., B. S., M. D. Associate in medicine in the University of Pennsylvania. Etc.

60 Thomas C. Kelly, A. M., M. D., Instructor in Medicine in the University of Pennsylvania. Etc.—Practical treatment, 1917, and many other writers.

W. Gilman Thompson, M. D. Professor of Clinical Medicine in the Cornell University Medical College, New York City. Visiting Physician to the Presbyterian and Bellevue Hospitals. Etc.—Practical Dietetics. 1906.

The following is a brief and concise summary of the verdict of the foregoing authorities, as applied to alcohol and, more especially, as applied to fermented malt liquors, expressed in popular rather than scientific form, citing, alphabetically for convenience, their indication in, and use for the enumerated ills, which, however, by no means exhaust the service of beer:

In/or for the	Summary of Verdict of the Authorities Cited:
Aged	—benefited by alcohol; a valuable and indispensable remedy for the, Jacobi. —beneficial effects marked in the, Hutchinson. —frequently eat more food when accompanied by beer, Tibbles. —useful to the, Tibbles. —is an aid to the, Brown: Murphy. —very valuable for the indigestion of the, White. —one of the most valuable remedies to increase appetite in the, Wilcox. —aids digestion, especially in the, Potter: Funk.
61	
Anemia, Cerebral—	produces satisfactory sleep, when wakefulness is due to, Bartholow.
Anti-Scorbutic—	is a restorative, due to live factor in malt extracts, Fischer.
Anti-Spasmodic—	is valuable as, due to hop principle, Hare. —as a mild sedative, Bastedo. Orr. —(And several of the other authorities).
Appetite	Stimulates the, Fitch. —bitter hop principle encourages, Fitch. —gives relish to food and increases, Tibeles. —improves, Butler. —one of the most valuable remedies to increase, Wilcox.
Biliousness	—(See indigestion, gastric catarrh, etc. below.)
Cardiac Energy—	is truly life-preserving, due to powers to sustain, Tibeles.
	—as cardiac stimulant, Mutler.
Circulation	serves to stimulate the, Borgey. —as an equalizer of the, Orr. —is useful in circulatory disorders in the infectious diseases of emaciated patients; Shattuck.

Colic, Flatulent—for their carminative action in, Bastedo.
—may be employed with advantage in, Wilcox.

62

Convalescence—benefited by alcohol; a valuable and indispensable remedy in, Jacobi.
—in protracted; from acute diseases; Rachford.
—frequently eat more food when accompanied by beer, Tibbles.
—useful to convalescents, Tibbles.
—as an aid to, Brown.
—for effect on appetite in, Bastedo.
—in, from acute diseases, surgical injuries, protracted suppuration, prolonged lactation, diseases of joints, scrofula, phthisis, etc., Bartholow.
—as a systematic support in, Orr.
—in convalescence from fevers; Shoemaker.
—in protracted convalescence from severe forms of acute diseases; Thompson.
Debility—valuable, when induced by disease, over-exertion, worry, neuralgia and the like; Fitch.
—debilitated persons frequently eat more food when accepted with beer, Tibbles.
Delirium—valuable in some forms of, Hutchinson.
—greatly benefited by alcohol in acute maniacal, when coexisting with conditions of adynamis, Bartholow.
—quiets delirium, Wilcox.

63

Delirium Tremens—when coexistent with condition of adynamis, greatly benefited by alcohol, Bartholow.
—to aid digestion, even in, Wood: Wood, Jr.
—as preventative of drunkenness and chronic alcoholism of decided advantage in, Thompson.
Diarrhoea—in infants, small doses beneficial in, Jacobi.
—in mild, may be employed with advantage, Wilcox.
Digestion—actually aids, by stimulating increased gastric juice secretion, Fitch.
—in moderate quantities, aids; aids gastric, Friedenwald: Ruhrah.
—aids, by increasing flow of saliva; Tibbles.
—diastase therein aids digestion of starchy foods; Sajours;
—also Lewis.
—aids digestion and absorption; White.
—are of the most valuable remedies to improve, Wilcox.
—stimulates the, Borgey.
—aids digestion in chronic diseases; Wood: Wood, Jr.
—an efficient aid to, Potter: Funk.
—useful in weak, Shoemaker.

- Disease —valuable in certain forms of, Fitch.
 —of service in instances of exhaustion from, Wilcox.
 —for those suffering from exhausting discharges, Thompson.
- 64
- Dysentery —in infants, small doses beneficial in, Jacobi.
 Dyspepsia —valuable in certain forms of, Fitch.
 —an excellent stomachic tonic in, Potter: Funk.
 —useful in flatulent, Thompson.
- Exhaustion, General—beers have served well in, Brill. (See "over-work," "over-exertion," etc.)
- Fatigue —beneficial effects marked in, Hutchinson.
- Fainting —for their reflex action in, Bastedo.
- Feeble —benefited by alcohol; a valuable and indispensable remedy, Jacobi.
 —useful to the, Tibbles.
 —very valuable for the indigestion of the, White.
 —one of the most valuable remedies to increase the appetite of the, Wilcox.
 —aids digestion especially in the, Potter: Funk.
- Fermentation, Internal—arrested by alcohol, Jacobi.
- Fevers —in restlessness of, due to hypnotic quality of hops, Stevens.
 —after enteric, Osler.
 —patient may take in, as much as he can tolerate, White.
- 65 —as a systematic support in low, Orr.
 —in, when it will slake the thirst, Thompson.
- Food —alcohol is a food, when solid carbohydrates are not tolerated, Jacobi.
 —more nourishment in beers than in any other alcoholic beverage, Fitch.
 —employed as, Stevens.
 —contains a material amount of diet deficiency substances; vitamins, Medical Brief.
 —of value as, Hoyt.
 —the stronger malt liquors are nutritive and fattening, Thompson.
 —contain sufficient extractives to give beers food value, Springthorpe.
 —to furnish food in chronic diseases that is absorbed without digestive effort, Wood: Wood, Jr.
- Gastric Catarrh—in acute, given children, to aid nutrition, Fischer.
 —in conditions of diminishing gastric secretion, Bastedo.
- Hypnotic —(Commented on favorably as a hypnotic by several authorities.—A. C. St. G.)
 —produces less derangement than most other hypnotics, Sollman.
 —possesses narcotic influence, Thompson.

- Hysteria —nervous sedative in, due to hops, Hare.
 —as a mild sedative in, Bastedo.
 —may be employed with advantage in, Wilcox.
 —as anti-spasmodic in, Orr.
- Illness —made tolerable by them, Cushney.
- Indigestion —it may relieve painful, White.
- 66
- Insomnia —in tuberculosis, to lessen, Williams.
 —has served well, where hesitated to use stronger narcotics, Brill.
 —hops contribute hypnotic power in, Bastedo.
 —singularly good results offered in sleeplessness, Kolifinski.
- Internal Tract—protected by alcohol, when solid carbohydrates not tolerated, Jacobi.
 —prevents destruction of, Fitch.
- Joints, Diseases of—justly esteemed in cases of, as restorative, Bartholow.
- Lactation —will increase mother's milk supply, Fischer.
 —increases fat content of mother's milk, frequently 2% in 2-3 days, Kerley.
 —increases mother's milk quantity and fat proportions, Holt: Howland.
 —as a restorative after protracted, Bartholow.
- Laxative —has decided effect in tendency to constipation, Fischer.
 —proper beers increase bowel action, Hare.
- Malnutrition —of children; valuable and easily tolerated by children, Dunn.
 —extremely valuable in cases of, Hoyt.
- Nausea —singularly good results obtained in, Kolifinski.
 —may relieve gastric pain and allay, Wilcox.
- 67
- Nervous Energy—truly life-preserving due to powers to sustain, Tibeles.
 —stimulates nervous system, Borgey.
 —a feeble narcotic to quiet nervous irritability, Wood: Wood, Jr.
- Nervousness —a sedative in; due to hops, Hare.
 —as a mild sedative in, Bastedo.
 —to quiet nervous irritability, Wood: Wood, Jr.
 —as sedative in, Orr.
 —as a calmative and hypnotic in nervous irritability, Potter: Funk.
- Neuralgia —valuable in disease caused by, Fitch.
 —of value to sufferers from, Tibeles.
- Night Sweats —in tuberculosis to lessen, Williams.
- Neurasthenia —to strengthen digestion in, Wood: Wood, Jr.

Nursing Mother—unwise to discontinue for N. M. who are accustomed to beer, Fischer.

—increases quantity of milk, Fischer.

—increases fat in mother's milk, frequently 2% in 2-3 days, Kerley.

—increases mother's milk quantity, Holt: Howland.

—improves appetite of mother and her milk, Hutchinson.

—extremely valuable to increase supply of mother's milk, Hoyt.

—increases amount of fats in mother's milk, Bartholow.

—for women exhausted by prolonged suckling, Thompson.

68

Nutrient Supply—as agent to introduce increased, Fitch.

—increase assimilation of non-nitrogenous food supply, Medical Brief.

—the stronger malt liquors are nutritive and fattening, Thompson.

Over-Exertion—valuable in disease caused by, and/or, Fitch.

Over-Work—beneficial effects from overwork and/or markedly improved, Hutchinson.

Worry—of value in overwork, Tibeles.

—very valuable for those thoroughly exhausted by overwork, White.

—of service in increasing the appetite in exhaustion from overwork, Wilcox.

—efficient aid to persons greatly exhausted from overwork, Potter: Funk.

—valuable in disease when caused by, Fitch.

—of value in, Tibeles.

Pain

—may be used to relieve; due to narcotic quality, Wilcox.

—to lessen sufferings of patients as an antipyretic, narcotic and stimulant, Wood: Wood, Jr.

Phthisis

—chiefly valuable for persons suffering from wasting diseases, such as, Ghosh: Deane: Ghosh.

—justly esteemed in convalescence in cases of, Bartholow.

—very few cases of, that are not benefited by alcoholic stimulation;

69

—patient allowed 2-3 glasses of beer per day, Yeo: Crawford; Buzzard.

—perfectly justifiable, often beneficial, to lessen sufferings in, Wood: Wood, Jr.

Pneumonia—in, Osler.

—may pull patient through crisis in, Tibeles.

Puerperal Mania—when coexistent with condition of adynamia, greatly benefited by alcohol, Bartholow.

- Scrofulosis —often beneficial in, Wood, Wood, Jr.
- Scurvy —beer has influence for good in, Yeo; Crawford; Buzzard.
- Sedentary Occupation—useful in, when in need of stimulation, Tibbles.
—one of the most valuable remedies for people in; to increase appetite; Wilcox.
—employed with advantage in those of; who have greatly enfeebled digestion; Thompson.
- Sleep —bitter hop principle encourages, Fitch.
—promotes rest and; is a mild hypnotic; Cubshny.
—induces more nearly natural, than drugs; Hutchinson.
—the hops renders beers sedative as well as hypnotic; Springthorpe.
—has well-known power to induce, Yeo; Crawford; Buzzard.
- 70 —promotes, Wilcox.
- Soporific —ideal; far better than opium and induces more nearly natural sleep; Hutchinson.
—especially useful in the evening as, Croftan.
—as a; most marked in women; Kolifinsky.
—has well-known power to induce sleep, Yeo; Crawford; Buzzard.
—produces calm after cerebral excitement, as a, Potter; Funk.
- Stomachic —aiding digestion, as a, Jacobi.
—exerts tonic action on the stomach, Fitch.
—employed internally as, Stevens.
—efficient, Butler.
—justly esteemed as, in chronic wasting diseases, Bartholow.
—easily tolerated by the stomach; White.
—carminative, due to hop principle; also,—stomachic properties greater than wine or spirits; Wilcox.
- Suppuration, Protracted—justly esteemed in case of profuse and, Bartholow.
- Surgical Injuries—justly esteemed in convalescence after, Bartholow.
- System —invigorates, the, Fitch.
—to arouse and support the flagging powers in sudden depression of the, Wilcox.
—when nervous system is over-taxed; Thompson.
- Tuberculosis —beers are best preparations when digestion is good in, Stevens.
—lessens tissue waste in, and retards progress of the disease; Wilcox.
—to stimulate appetite and aid digestion in, Musser; Kelly.
—“greatest possible service in tuberculosis when fever is present,” Musser; Kelly quoting Latham upon Otis.
- 71

- Typhoid —in, where underfed by weakened digestive capacity; in children, given as food, not as stimulant; Rachford.
—for emaciated patients, in, Shattuck.
- Vertigo —singularly good results obtained in, Kolifinski.
- Vomiting —as a specific in acute; intolerance is rare; Kolifinski.
—supplies good results in billious vomiting; Kolifinski.
—may relieve painful vomiting; Wilcox.
- Wasting Conditions & Diseases—valuable in, Hare.
—as in phthisis, Ghosh; Deane; Ghosh.
—justly esteemed as restorative in, Bartholow.
—very valuable food for persons suffering from, White.
—as a systematic support in, Orr.

(Signed) A. V. St. George, M. D.

Sworn to before me this 21st day of December, 1921. (Signed)
Richard F. Maloney, Notary Public, etc.

72 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of Ralph Hayward Pomeroy.

STATE OF NEW YORK,

City of New York, County of Kings, ss:

Ralph Hayward Pomeroy, being duly sworn, deposes and says:

I reside at 93 Remsen Street, Brooklyn, and have my office at the same address.

I am a graduate of Long Island College Hospital and have practiced medicine and surgery in the Borough of Brooklyn, City of New York, under due license by the State of New York since 1891. During the past fifteen years, my practice has been limited to the field of Gynecology and Obstetrics. At the present time I am Attending Gynecologist and Obstetrician to the Brooklyn Hospital and Consulting Obstetrician at Kings County, St. John's, Methodist

73 Episcopal and Bushwick Hospitals. I have occupied the position of President of the Medical Society of the County of Kings and am at present a member of the Board of Trustees. I am a Fellow of the American College of Surgeons, and of the American Gynecological Society. At the present time I hold office as President of the New York Obstetrical Society.

In the course of many years of Consulting and Hospital practice in the field of Obstetrics (management of child-birth) I have had occasion to advise in numerous cases of puerperal (child-birth) fever which, for reasons understood but thus far uncontrolled, is still a terrible scourge among child-bearing women. In considering the more formidable and protracted illness types of these infection fevers,

I testify to an opinion of myself and other authorities on obstetrics that the liberal use of high-grade quality of beer of 3 to 6% alcoholic content is a most valuable resource in supporting the nutrition of the patient, encouraging the amount of fluid intake and output, in conjunction with a reasonably assumed specific effect of properly diluted alcohol in combating the actual toxic and lethal effects of the septic poisons diffused through the body of the unfortunate patient.
(Signed) Ralph H. Pomeroy.

Sworn to before me this 19th day of December, 1921. (Sgd.)
Andrew C. Kopf, Notary Public, etc.

74 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of William F. Cunningham.

STATE OF NEW YORK.

City of New York, County of New York, ss:

William F. Cunningham, being duly sworn, deposes as follows:

I reside and maintain offices at 116 East 63rd Street, New York City; am a graduate of Yale Medical College (1911); Adjunct-Attending Surgeon of Bellevue Hospital, New York City; and Instructor in Surgery at the College of Physicians and Surgeons, Columbia University in the City of New York.

I am engaged in the general practice of medicine and surgery.

75 Pure beer has always had and has its proper place in medicine. Its absence from the pharmacopeia, like many other remedial agents in medical practice, is merely testimony to its harmless character.

I have prescribed beer extensively and have found it beneficial in all instances. Nothing can take its place in cases where beer finds particular application as, for example, in increasing the flow of mother's milk, particularly in women of racial stocks accustomed to it.

Pure beer has greater application than any other class of alcohols, and has achieved the return to good health in a greater variety of human ills and for a greater number of sufferers than any other like medicinal agent.

I have found that beer is beneficially employed in cases as follows:

(1) By those whose nervous organization is easily overtaxed or who lose all appetite through over-exertion, fatigue or worry;

(2) By people of weakened digestion, due to sedentary occupations; and, in a large number of instances.

(3) By convalescents from severe, prolonged or acute diseases.

In convalescence from the greater number of human ills, not only after diseases, but after injuries and post-operative cases, it is beneficially employed. In conditions of debility, in young and old, pure beer performs a positive service when properly prescribed. To cor-

76 rect many gastric disturbances, to bring to normal the underfed and underweight, to aid digestion, and generally to invigorate debilitated systems, no alcoholic medicinal agent can take the place of beer. Moreover, beer, viewed as a drug, has many properties possessed by no other, *than* gives it the preference, as when employed to rid the patient of certain forms of nervousness and insomnia; it is equally beneficial, but milder and without the after-effects of substitutes now used in place of beer.

Beer is needed in the practice of medicine. W. F. Cunningham.

Sworn to before me this 21st day of December, 1921. Richard F. Moloney, Notary Public, 209, New York County. Register's No. 3134. Commission expires March 30, 1923.

77 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of Herman Gliboff.

STATE OF NEW YORK.

City of New York, County of Queens, ss:

Herman Gliboff, being duly sworn, deposes and says:

I reside at 116-12 Boulevard, Rockaway Park, New York City, where I also maintain my offices.

I am a graduate of the College of Physicians and Surgeons, Columbia University, and for the past three years have been a licensed practicing physician in New York State.

During my studies and practice of medicine, I have found beer that is made of malt and hops, to be very essential to the following diseases and conditions of the body:

- (1) In Anemia which is due to the loss of blood;
- (2) in undernourishment and improper assimilation of
78 foods;
- (3) in authenia, which is weakness, caused by a number of ills;
- (4) for nursing mothers, by increasing the quantity and quality of the milk to be supplied to the infant;
- (5) in post-operative causes,—used as a body-builder;
- (6) in digestive disturbances;
- (7) in insomnia;
- (8) and following upon and in a number of prolonged severe and wasting diseases, such as:
 - (a) Typhoid Fever;
 - (b) Pneumonia;
 - (c) Influenza;
 - (d) Eucaphilitis, Lethargica, etc.

Beer, unlike the spirituous liquors, is not necessarily used in emergency cases to save life, but if used during a longer period of time aids in building up the tissues and general health of the body, and in this manner will prolong life and therefore save life.

Beer not only aids in saving life but in cases such as insomnia, it gives great relief, which people are now getting through the use of harmful drugs, because of their inability to obtain beer. (Sgd.) Herman Gliboff, M. D., 116-12 Boulevard, Rockaway Park, N. Y.

Sworn to before me this 19th day of December, 1921. (Sgd.) H. J. Sprewg, Notary Public, etc.

79 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of Gustav Scholer, M. D.

STATE OF NEW YORK,
City of New York,
County of New York, ss:

Gustav Scholer, M. D., being duly sworn, deposes and says:

I reside at 10 Jumel Terrace, Rear W. 162nd St., New York City, New York, where I also maintain my office.

As a physician of over 35 years' practice including service at Hospitals and Dispensaries, I found that the administration of wholesome beer has given excellent results to patients suffering from debility.

80 Malt which forms the major ingredient of beer is a food beneficial to nursing mothers, it is a tissue builder, it checks febrile and inflammatory processes. It has been in use from time of Hippocrates.

Hops also an ingredient of beer make a splendid tonic for Dyspepsia, have a diuretic effect and act in a soothing form in nervous tremors and wakefulness.

Beer a combination of Malt and Hops is highly recommendable as a true medicinal tonic, its production ought not be suppressed, on the contrary, it ought to be encouraged and made of sufficient strength.

I consider good beer a wholesome beverage for the commonwealth. (Signed) Gustav Scholer, M. D.

Sworn to before me this 20th day of December, 1921. (Sgd.) Ernest E. Thomas, Notary Public, etc.

81 United States District Court, Southern District of New York

[Title omitted.]

Affidavit of William J. Maroney.

STATE OF NEW YORK,

City of New York,

County of New York, ss:

William J. Maroney, being duly sworn, deposes as follows:

I reside at Woodmere, Long Island and maintain offices at #11 East 48th Street, New York City, New York. I am a graduate of the Yale Medical School, 1900; Visiting Obstetrician to St. Ann's Hospital,—the obstetrical department of the New York Foundling Hospital; and Assistant-Attending Gynecologist to St. Vincent's Hospital.

During the twenty years (20 yrs.) of my practice, the past eleven (11) of which were limited to obstetrics and gynecology, I have extensively prescribed fermented malt liquors, beer and ale.

82 My use of beer, in hospital and home, has been restricted to prescriptions for nursing mothers. Before Prohibition, I prescribed fermented malt liquors in a majority of maternity cases.

Good beer and ale are invaluable in lactation. To-day unfortunately many mothers in moderate circumstances are unable properly to nurse their babies, particularly the first-born. Before Prohibition, beer and ale, were cheap and indispensable adjuvants, both to increase the quantity of the nursing mother's milk and especially to improve its quality in essential fat content, necessary to the baby's health and growth. The prohibition of one of the best, indeed, in many maternity cases of moderately circumstanced families, the only desirable and efficacious medicinal agent, is an act, arbitrary, blind and indefensible. There is nothing greater than the life of the first-born and the new-born and it is this life that is frequently endangered and injured to-day by the prohibition of prescription of malt liquors by the medical profession. (Sgd.) Wm. J. Maroney.

Sworn to before me this 20th day of December, 1921. (Sgd.) Edmund Kolb, Notary Public, etc.

83 United States District Court, Southern District of New York

[Title omitted.]

Affidavit of Graeme M. Hammond.

STATE OF NEW YORK,

City of New York,

County of New York, ss:

Graeme M. Hammond, being duly sworn, deposes and says:

I reside and maintain an office at 60 West 55th Street, New York City.

I have always used malt liquors for my patients ever since I have been in practice,—over forty years.

I consider beer, when taken advisedly, an excellent tonic and a stimulant to the appetite and to digestion. It is most beneficial at bed-time in cases of insomnia, and for cases of neurasthenia as a food and mild tonic. In cases of incipient tuberculosis, I would give it daily. It is one of the incomprehensible features of the Volstead law that while I may give a patient liquor containing fifty percent alcohol, I am forbidden to prescribe a beverage containing only seven percent alcohol. (Sgd.) Graeme M. Hammond.

Sworn to before me this 21st day of December, 1921. (Sgd.)
H. W. Meader, Notary Public, etc.

85 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of Luigi Celano.

STATE OF NEW YORK,
City of New York,
County of Bronx, ss:

Luigi Celano, being duly sworn, deposes as follows:

I reside and have offices at #2282 Arthur Avenue, Bronx, New York City.

I am a graduate of the College of Physicians and Surgeons, Columbia University, in the City of New York (1913.) I am Instructor in Surgery in the New York University Medical School and Assistant-Attending Surgeon to the Italian Hospital, New York City. Since my graduation I have specialized in surgery.

86 Extensive medical use of beer throughout my practice has, in all cases, when prescribed, obtained entirely satisfactory results. In convalescence, following upon injury, in post-operative treatment, in cases following upon debility generally; I have found beer to be a very valuable medicinal servant. Its proper place has not been and cannot be taken by any other substitutes. Luigi Celano.

Sworn to before me this 21st day of December, 1921. Richard F. Maloney, Notary Public.

87 United States District Court, Southern District of New York.

Affidavit of William J. Mathews.

[Title omitted.]

STATE OF NEW JERSEY,
County of Hudson, ss:

William J. Mathews,, being duly sworn, deposes and says:

I reside at #938 Hudson Street, Hoboken, New Jersey, where I also maintain my office. I am a graduate (1900) of the Medico Chirurgical College of Philadelphia, Pa., and also a Graduate Pharmacist of its pharmacy department. I am engaged in the general practice of medicine and surgery and am Attending Physician to St. Mary's Hospital in Hoboken, N. J.

I have extensively prescribed malt liquors, particularly beer of average Alcohol Content of 4 to 4½% by weight, not only to my patients but in my own family during my twenty (20) years of active practice.

88 I have found beer to be a very valuable remedial agent and have prescribed it in wasting diseases, in post-operative cases, in cases of digestive disturbance, as a tissue builder generally, and as an invigorating stimulant. I have found that not only adults but children bear such stimulants well. A glass of good beer actually stimulates the appetite, invigorates the system and, hence, acts as agent introducing into the body an increased supply of nutriment.

Moreover, good malt liquors, when containing the bitter principle of the hops, act as appetizers, aid digestion and promote sleep. These qualities make beer of important value in certain forms of dyspepsia, in debility, particularly when induced by neuralgia, overexertion, worry and like diseases.

The considerable food-stuffs present in beer and generally absent in higher alcoholics, make beer an ideal agent therapeutically. It combines curative properties in its body-building substances which are both easily assimilated and have a pronounced advantage, in the slight laxative effect of beer where there is a tendency to constipation.

Beer is a very valuable and important medicinal agent and finds wider application than any other alcoholic. It is for that reason invaluable as a medicinal adjunct. (Sgd.) William J. Mathews, M. D.

Sworn to before me this 20th day of December, 1921. (Sgd.) Edward Bullwinkel, Notary Public, etc.

89 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of Curt E. H. Nicolai.

STATE OF NEW YORK,
City of New York,
County of New York, ss:

Curt E. H. Nicolai, being duly sworn, deposes and says:

I reside at 81 West 119th Street, New York City, New York, and have my office at the same address.

I am a graduate of the Royal University of Leipzig, Germany, and have been in practice since 1881. I started my practice in New York City in 1882 and have ever since practiced here.

90 During these forty (40) long years of my general medical practice, I have found beer a very valuable remedy in innumerable cases and of great help in building up patients in strength and energy after serious diseases.

I consider beer one of the best remedies for sleeplessness and a very valuable tonic for adults and children.

It is of very great benefit to nursing mothers. It is invaluable in convalescence and in debility, whether in children or in grown people. I have found beer to obtain very satisfactory results in all cases where I have prescribed it. (Sgd.) Curt E. H. Nicolai, M. D.

Sworn to before me this 19th day of December, 1921. (Sgd.) E. B. French, Notary Public, etc.

91 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of Antonio Arbona, M. D.

STATE OF NEW YORK,
City of New York,
County of Kings, ss:

Antonio Arbona, M. D., being duly sworn, deposes and says:

I reside at one thirty (130) Pennsylvania Avenue, in the Borough of Brooklyn, New York City, N. Y.

I am a graduate of the Long Island College Hospital, New York, class 1887, and have been practicing ever since.

During my professional life I have prescribed for my patients both wines and beers with very apparent beneficial results.

92 I regard good beer as a mild hypnotic which, taken before retiring, in proper cases, secures quiet and refreshing sleep. It is a valuable digestant for under-fed children and, by its bit-

ter hop principal, is particularly valuable in supplying a relatively large amount of nutrition in fluid and easily-assimilated form. In conditions, just short of good health, in old age, in conditions due to overwork and fatigue, the beneficial effects of good beer are most marked. It is more beneficial than spirits in stimulating the body, promotes digestion, gives a relish to food, increases appetite and promotes the flow of saliva. It is very useful in convalescence and for those enfeebled by chronic diseases, and the aged. It is a boon to those whose stomach has lost tone by overwork, rush and worry, and to sufferers from sleeplessness and neuralgia.

I pray that in future I may be able to use beer again, and know that I have lost a very valuable medicinal agent by the denial of the prescription of beer through prohibition laws. (Sgd.) Antonio Arbona, M. D.

Sworn to before me this 19th day of December, 1921. (Sgd.) Chas. Alt, Notary Public, etc.

93 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of Joseph Samenfeld, M. D.

STATE OF NEW YORK.

City of New York,

County of Kings, ss:

Joseph Samenfeld, M. D., being duly sworn, deposes thus:

I reside and maintain offices at 122 Pennsylvania Avenue, in the Borough of Brooklyn, New York City.

I graduated from the Bellevue Hospital Medical School of New York City (Medical Branch of New York University) in 1902, and have since been engaged in the general practice of medicine.

I hereby certify that beers and other malt liquors, as brewed prior to the enactment of the 18th Amendment, were digestants and tonics, absolutely harmless, as the contained alcohol therein
94 was in such dilution as to be non-injurious, and of very great medicinal value as tissue-builders and body-invigorants.

I have found beer throughout the entire use of my practice as an invaluable remedy in cases of debility following upon prolonged illness, as an irreparable agent in increasing the flow and quality of mothers' milk during lactation, and as a tonic superior to any others in cases of mild gastric disorders or the milder stomach diseases. I know of nothing that will, while benefiting the patient as a specific in certain cases, at the same time promote and accelerate recovery and convalescence as good beer has done for my patients. I regard it as invaluable after prolonged diarrhœa. I regard it as superior and of very great benefit following after typhoid, typhus, pneumonia, in anemia, for individuals who are under weight, and in fact in all cases of debility brought on by wasting diseases.

I have found it a blessing to the patient in supplying nourishment in prolonged cases due to ulcers of the stomach.

It is an excellent soporific in proper cases, accomplishing a two-fold purpose, that of sound sleep and a reinvigoration of the body which generally suffers from insomnia.

The results obtained by me in the prescription of good beer have been wholly satisfactory. (Sgd.) Joseph Samenfeld, M. D.

Sworn to before me this 20th day of December, 1921. (Sgd.)
Chas. Alt, Notary Public, etc.

95 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of A. F. Zahn.

STATE OF NEW YORK,
City of New York,
County of Kings, ss:

A. F. Zahn, being duly sworn, deposes as follows:

I reside and maintain an office at 747 Green Avenue, Brooklyn, N. Y., and have been in the general practice of medicine since 1887, when I graduated from Bellevue Hospital Medical College, New York.

I have, during the entire period of my practice until the advent of Prohibition, prescribed beer largely in cases for aged people and patients suffering from nervous breakdown or loss of sleep, beer having greatly benefited such patients in aiding digestion,
96 quieting the nervous system and inducing sound sleep.

I have always preferred beer as a soporific to induce sleep, other narcotics having been found by me to be more harmful than good pure beer. It has proven in my practice to be invaluable as a galactagogue. I have living many patients who suffered from tuberculosis and who owe their restoration to health to the tissue-building power of fermented malt liquors prescribed by me for them which, giving them readily assimilated food, improved their blood, added weight and healed their lungs.

Beer has served my patients in many other instances and diseases, and I consider it a remedy for which, in many cases, there is no adequate substitute. (Sgd.) Anthony F. Zahn, M. D.

Sworn to before me this 21st day of December, 1921. (Sgd.)
Edgar A. Netherclift, Com. of Deeds, etc.

97 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of C. T. Graham-Rogers.

STATE OF NEW YORK,
City of New York,
County of Kings, ss:

C. T. Graham-Rogers, being duly sworn, deposes and says:

I reside at Tottenville, Staten Island, and am a graduate from the Baltimore University School of Medicine (1899), and have been active in the general practice of medicine for twenty-one years.

I am the State Medical Inspector of Factories for the State of New York; and Surgeon to the 27th Division Train. I opened up the New York Department of Health Clinic for Pulmonary Diseases, i. e., Tuberculosis, in 1902, and have, in the past, acted in the capacity of attending physician at governmental clinics, where I have given special attention to Gastro-Intestinal Diseases.

98 & 99 I regard beer, comprising ale, stout, porter, lager and malt tonics, as a very valuable remedy that combines the properties of food and medicine to a degree not shared by any other medicinal agent.

During the course of my practice, I have prescribed liquors, spirits, wine and beer, generally, but have found beer to be of far greater service than any of the other alcoholics.

Beer is an excellent stomachic and is particularly valuable for its mild laxative properties. It is of far greater service than other drugs that might be used in substitute thereof in specified cases, because it combines a valuable food with its medicinal properties. It is exceedingly valuable in all cases where properly used. I have found it of particular benefit in the treatment of pulmonary diseases as a body and tissue builder, checking the waste of tissue, and rebuilding the body and thereby contributing to the restoration of the health of patients infested with tuberculosis.

As there is no substitute for beer in proper cases, it should be restored to the service of the medical profession. (Sgd.) C. T. Graham-Rogers.

Sworn to before me this 21st day of December, 1921. (Sgd.) John A. Leavens, Notary Public, etc.

STATE OF NEW YORK,
County of New York, ss:

Samuel Dana Hubbard, M. D., Director of the Bureau of Public Health Education, New York City Department of Health being duly sworn deposes and says:

I am a citizen of the United States, over twenty-one years of age, and reside at Freeport, New York, in the State of New York.

That it is my conviction that beer, as the term is now used in general usage, is not recognized as a medicine and it has no standing in the U. S. Pharmacopœia. So far as my knowledge and opinion go, it is my impression that beer and alcoholic extract of malt, hops and other vegetable materials, with at times a varying content of alcohol, has been used by different members of the medical profession in their general practice, and I personally myself have done so in a number of instances; but I do not consider that there is no substitute for this agent. On the other hand, when I consider the harm that has been done through the promiscuous sale and ingestion of beer indiscriminately, I appreciate and am of the opinion that more harm has been done by the use of beer on the part of citizens without medical direction than good has been done under the advice of the medical profession, through the use of beer.

The national inhibition of the use of beer has not, in my estimation, embarrassed my practice for the reason that I am aware of other agents in our pharmacopœia that can readily displace this agent without its accompanying dangers through indiscriminate use of the same. (Signed) S. Dana Hubbard, M. D.

Subscribed and sworn to before me this 5th day of January, 1922.
Thomas G. Rocks, Comm. of Deeds, 200. Exp. 7-17-22.

101 **Affidavit of Arthur M. Shipley.**

Arthur M. Shipley, M. D., 1827 Eutaw Place, Baltimore.

12-29-21.

I do not believe that beer has any value as a therapeutic agent in the treatment of disease, and I am strongly opposed to putting the responsibility for the dispensation on the Medical Profession. (Signed) Arthur M. Shipley.

Subscribed and sworn to before me this 29th day of December, 1921. Eleanor L. Muhly, Notary Public.

102 **Affidavit of J. G. Vaughan.**

STATE OF NEW YORK,
County of New York, ss:

J. G. Vaughan, M. D. being duly sworn, deposes and says:

I am a citizen of the United States, over twenty-one years of age, and reside in New York City.

That it is my conviction that beer, as the term is now understood in general usage, is not a medicine and is not, nor has it ever been, in the pharmacopœia. (Signed) J. G. Vaughan.

Subscribed and sworn to before me this 5th day of January, 1922.
Arthur A. Atha, Notary Public, N. Y. County. Co. Clerk 225.

STATE OF NEW YORK,
County of New York, ss:

A. C. Prentiss, M. D. being duly sworn deposes and says:

I am a citizen of the United States, over twenty-one years of age, and reside at 226 West 78th Street, New York City.

That it is my conviction that beer, as the term is now understood in general usage, is not recognized as a medicine and it has no standing in the pharmacopœia. (Signed) Alfred C. Prentice.

Subscribed and sworn to before me this 4th day of January, 1922.
Arthur A. Atha, Notary Public, N. Y. County. Co. Clerk 225.

STATE OF NEW YORK,
County of New York, ss:

Alexander Lambert, M. D. being duly sworn, deposes and says:

I am a citizen of the United States, over twenty-one years of age and reside in New York City.

That it is my conviction that beer, as the term is now understood in general usage, is not a medicine and it has never been in the pharmacopœia, nor is it here at present although other alcoholic solutieres used as beverages have been and are at present in the pharmacopœia. (Signed) Alexander Lambert, M. D.

Subscribed and sworn to before me this 6th day of January, 1922.
Arthur A. Atha, Notary Public, N. Y. County. Clerk 225.

STATE OF NEW YORK,
County of New York, ss:

H. G. Myers, M. D. being duly sworn, deposes and says:

I am a citizen of the United States, over twenty-three years of age, and reside at 153 West 78th Street, New York City.

That it is my conviction that beer, as the term is now understood in general usage, is not recognized as a medicine and it has no standing in the pharmacopœia. (Signed) H. G. Myers, M. D.

Subscribed and sworn to before me this 4th day of January, 1922.
Arthur A. Atha, Notary Public, N. Y. County. Co. Clerk 225.

106

Affidavit of D. S. Dougherty.

STATE OF NEW YORK,

County of New York, ss:

D. S. Dougherty, M. D. being duly sworn deposes and says:

I am a citizen of the United States, over twenty-one years of age, and reside at 111 West 85th Street, New York City.

That it is my conviction that beer as the term is now understood in general usage, is not recognized as a medicine and it has no standing in the pharmacopœia. (Signed) D. S. Dougherty.

Subscribed and sworn to before me this 4th day of January, 1922.
Arthur A. Atha, Notary Public, N. Y. County. Clerk 225.

107

Affidavit of John McCabe.

STATE OF NEW YORK,

County of New York, ss:

John McCabe, M. D. being duly sworn, deposes and says:

I am a citizen of the United States, over twenty-one years of age, and reside at 348 Central Park West, New York City.

That it is my conviction that beer, as the term is now understood in general usage, is not recognized as a medicine and it has no standing in the pharmacopœia. (Signed) John McCabe.

Subscribed and sworn to before me this 4th day of January, 1922.
Arthur A. Atha, Notary Public, N. Y. County. Co. Clerk 225.

108 United States District Court Southern District of New York.

[Title omitted.]

Stipulation Waiving Printing Congressional Record.

It is hereby stipulated that the printed extracts from the congressional record, and the various copies of the congressional record offered by the Government in opposition to the motion for injunction and in favor of the motion to dismiss, need not be printed in the transcript of record in the United States Supreme Court, but that the originals now on file in the office of the Clerk of this Court may be submitted with the same force and effect as though the same were printed in the transcript of record.

Dated, New York, December 29, 1922. Olcott, Bonynge, Mc-
Manus & Ernst, Solicitors of Complainant. Wm. Hayward, U. S.
Attorney, Solicitor of Defendants.

109 United States District Court, Southern District of New York.

[Title omitted.]

Order Denying Temporary Injunction, etc.

This cause came on to be heard at a term of this court and was argued by counsel and thereupon on consideration thereof, it was

Ordered, adjudged and decreed as follows, viz:

That the motion on behalf of the complainant for preliminary injunction restraining the defendants from enforcing the provisions of the act of Congress of November 23, 1921, be and the same hereby is in all respects denied.

That the motion of the defendants that the complaint herein be dismissed be and the same hereby is granted.

That the defendants have judgment against the plaintiff for their costs to be taxed.

Dated, New York, February 23rd, 1922. L. Hand, U. S. D. J.

110 District Court of the United States, Southern District of New York.

[Title omitted.]

Final Judgment.

The complainant in the above entitled cause filed its bill of complaint on the 12th day of December, one thousand nine hundred and twenty-one and the writ of subpoena was thereupon issued, and returned personally served.

An appearance was duly entered for the defendants by William Hayward, solicitor.

On January 25, 1922, an order was filed correcting the title of this action by striking out the H in the name of William H. Hayward and by adding as a party defendant David H. Blair as Commissioner of Internal Revenue and on the same date an amended bill of complaint was filed. On February 21, 1922, an appearance was duly entered for David H. Blair as Commissioner of Internal Revenue.

Afterwards, and at the February term 1922 of said Court, present the Honorable Learned Hand, the said cause came on to be heard on the pleadings and proofs, and was argued by counsel. On February 6, 1922, a motion was filed to dismiss the bill of complaint and on February 17, 1922, said motion was granted.

On the 23rd day of February, one thousand nine hundred and twenty-two, the said Court caused its final decree to be entered herein, by which it was adjudged that the complaint be dismissed and that the defendants have judgment against the plaintiff for their costs to be taxed the same being annexed hereto.

And the costs having been taxed by the clerk at Twenty-five and

30/100 (\$25.30) dollars, the process, pleadings, and decrees together with other papers filed in said cause, are duly annexed hereunto.

Wherefore, let the said Ralph P. Day, Federal Prohibition Director for the State of New York, Frank K. Bowers, Collector of Internal Revenue for the Second District of New York, William Hayward, U. S. Attorney and David H. Blair, Commissioner of Internal Revenue recover of said James Everard's Breweries the sum of Twenty-five and 30/100 (\$25.30) dollars, the cost and charges as taxed. Signed and enrolled this 28th day of February A. D. 1922. Alex Gilchrist, Jr., Clerk.

112 United States District Court, Southern District of New York.

[Title omitted.]

Petition for Appeal and Order Allowing Same.

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

James Everard's Breweries, by its solicitors, Olcott, Bonyng, McManus & Ernst, feeling aggrieved by the final decree rendered and entered in the above entitled cause on the 23rd day of February, 1922, which decree dismissed the complaint, and in which case there was involved a constitutional question arising under the Constitution of the United States, does hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignments of error hereto annexed, and filed herein, and prays that this appeal be allowed, and that a citation be issued, as provided by law, and that a transcript of the record and proceedings, and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States, sitting at Washington, D. C., under the rules of such Court, in such cases made and provided, and your petitioner further prays that the proper order relating to the required security to be required if it be made.

113 Dated, New York, March 22nd, 1922. Olcott, Bonyng, McManus & Ernst, Solicitors for Complainant-Appellant.

Appeal allowed upon giving bond as required by law, for the sum of \$250.

Dated, New York, March 23, 1922. Jno. C. Knox, U. S. District Judge.

- 114 District Court of the United States of America for the Southern District of New York, in the Second Circuit.

[Title omitted.]

Bond on Appeal.

Know all men by these presents, that James Everard's Breweries, as principal, and National Surety Company, a corporation under the laws of the State of New York, with its principal place of business at No. 115 Broadway, in the City, County and State of New York, as surety, are held and firmly bound unto the above named Ralph A. Day, Federal Prohibition Director of the State of New York, and others, etc., in the sum of Two hundred and fifty (\$250) dollars to be paid to the said Ralph A. Day, Federal Prohibition Director of the State of New York, and others, etc., for the payment of which well and truly to be made said principal and surety bind themselves, their heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed and dated the 24th day of March, 1922.

Whereas, the above named James Everard's Breweries, has prosecuted an appeal to the Supreme Court of the United States, to reverse the final judgment, and entered in the above entitled suit, by
115 a Judge of the District Court of the United States for the Southern District of New York.

Now, therefore, the condition of this obligation is such, that if the above named James Everard's Breweries, shall prosecute said appeal to effect, and answer all damages and costs if it fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue. James Everard's Breweries, By Daniel M. Tracy. National Surety Company, By Roy B. Davis, Resident Vice-President. Attest: R. V. Tynan, Resident Assistant Secretary.

- 116 *Affidavit, Acknowledgment, and Justification by Guarantee or Surety Company.*

STATE OF NEW YORK,

County of New York, ss:

On this 24th day of March, 1922, before me personally came Roy B. Davis, known to me to be the Resident Vice-President of the National Surety Company, the corporation described in and who executed the foregoing bond of James Everard's Breweries, as surety and who, being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that he is the Resident Vice-President of said Company, and knows the corporate seal thereof; that the said National Surety Company is duly incorporated under the laws of the State of New York, that said Company has complied with the provisions of the Act of Congress of August 13, 1894, that

the seal affixed to the within Bond of James Everard's Breweries, is the corporate seal of said National Surety Company, and was thereto affixed by authority of the Board of Directors of said Company, and that he signed his name thereto by like authority as Resident Vice-President of said Company, and that he is acquainted with N. V. Tynan, and knows him to be the Resident Assistant Secretary of the Company; and that the signature of said N. V. Tynan, subscribed to the said Bond is in the genuine handwriting of said N. V. Tynan, and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever, by more than the sum of Ten Million dollars. Roy B. Davis. Deponent's Signature.

Signed, sworn to, and acknowledged before me this 24th day of March, 1922. H. E. Hasett, Notary Public, &c.

STATE OF NEW YORK,

County of New York, ss:

On this 27th day of March, 1922, before me personally came Daniel M. Tracy, to me known, who being duly sworn, did depose and say that he resides in Borough of New York, City of New York; that he is the Treasurer of the James Everard's Breweries, the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order. Thos. J. Gorvin, Notary Public. (Seal of Notary.)

117 United States District Court, Southern District of New York.

[Title omitted.]

Assignments of Error.

Comes now the complainant, James Everard's Breweries, and files the following assignments of error, upon which it will rely upon this appeal from the final decree made by this Honorable Court on the 23rd day of February, 1922, in the above entitled cause:

First. The Court erred in denying the motion for preliminary injunction restraining the defendants from enforcing the provisions of the Act of Congress of November 23, 1921, this assignment of error being taken as incidental to the provision in said decree dismissing the complaint.

Second. The Court erred in not granting said motion for injunction as against all of the defendants specified in the bill of complaint.

Third. The Court erred in granting the motion of the defendants to dismiss the complaint, and in granting a final decree of dismissal,

Fourth. The Court erred in adjudging that Section 2 of the Act of November 23, 1921, supplemental to the National Prohibition Act, popularly designated as the Willis-Campbell Act, was constitutional.

118 Fifth. The Court erred in failing to hold that said Act, as aforesaid, and particularly Section 2 thereof, was unconstitutional.

Sixth. The Court erred in failing to grant to the complainant, the relief prayed for in the bill of complaint.

Seventh. The Court erred in holding that Congress was justified in the furtherance of the Eighteenth Amendment to the Federal Constitution, to enact legislation which prohibited physicians from prescribing, permittee druggists from selling, and brewers from making intoxicating malt liquors for use for medicinal purposes under proper governmental regulations.

Eighth. The Court erred in holding that Congress was within its constitutional prerogatives in enacting so much of the Willis-Campbell Act as forbade brewers to make, physicians to prescribe, and permittee druggists to sell intoxicating malt liquors for use for medicinal purposes, under proper governmental regulations.

Ninth. The Court erred in holding that Congress was the sole judge of its acts as to the reasonableness of the legislation pertaining to the enforcement of National Prohibition, and the National Prohibition Laws.

Wherefore, Complainant-Appellant prays that the final decree of said court may be reversed, and in order that the foregoing assignments of error may be made a part of the record, the Complainant-Appellant presents the same to the Court, and prays that such disposition may be made thereof as is in accordance with the law and the statutes of the United States in such case made and provided. Olcott, Bonynge, McManus & Ernst, Solicitors for Complainant-Appellant, James Everard's Breweries.

By John C. Knox, one of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, to Ralph A. Day, Federal Prohibition Director of the State of New York; Frank K. Bowers, Collector of Internal Revenue for the Second District of New York; William Hayward, United States Attorney for the Southern District of New York, and David H. Blair, as Commissioner of Internal Revenue, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court at Washington, District of Columbia, on the 22nd day of April, 1922, pursuant to an appeal filed in the Clerk's office of the District Court of the United States, for the Southern District of New York, wherein James Everard's Breweries is the Appellant and you are the Appellees, to show cause, if any there be,

why the final decree in said appeal mentioned should not be corrected and reversed, and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 23rd day of March, in the year of our Lord, one thousand nine hundred and twenty-two, and of the Independence of the United States the One Hundredth and Forty-sixth. Jno. C. Knox, Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.

120 United States District Court, Southern District of New York.

[Title omitted.]

Stipulation as to Transcript.

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties, consisting of the following papers:

1. Subpœna.
2. Amended complaint.
3. Order.
4. Stipulation providing that extracts from congressional record or of testimony before Committee of Congress may be used as though statements were contained in affidavit form.
5. Notice of motion for preliminary injunction.
6. Notice of motion to dismiss complaint.
7. Affidavits of physicians on behalf of complainant.
8. Affidavits of physicians on behalf of defendants.
9. Order granting motion for final judgment.
10. Final Judgment.
11. Notice of appeal, and order allowing appeal.
12. Bond on appeal.
13. Assignments of errors.
14. Citation to the U. S. District Court.
15. Stipulation waiving printing of extracts from congressional record and copy of congressional record.
16. Order entered on said stipulation.
17. Stipulation as to correctness of appeal record.
18. Certificate of Clerk.

Dated New York, January 3, 1923. Olcott, Bonyng, McManus & Ernst, Solicitors of Complainant. Wm Hayward, U. S. Atty., Solicitor of Defendants.

121 UNITED STATES OF AMERICA,
Southern District of New York, ss:

In Equity. E-22-328.

JAMES EVERARD'S BREWERIES, Complainant,
 vs.

RALPH A. DAY, Federal Prohibition Director for the State of New York; Frank K. Bowers, Col. of Internal Revenue for the Sec. Dist. of New York; William Hayward, U. S. Attorney, and David H. Blair, as Comm. of Int. Revenue, Defendants.

Clerk's Certificate.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 3rd day of January in the year of our Lord one thousand nine hundred and Twenty-three and of the Independence of the said United States the one hundred and forty-seventh. Alex. Gilchrist, Jr., Clerk. [Seal of District Court of the United States, Southern District of New York.]

Endorsed on cover: File No. 29,351. S. New York D. C. U. S. Term No. 801. James Everard's Breweries, appellant, vs. Ralph A. Day, Prohibition Director of the State of New York, et al. Filed Jany. 18th, 1923. File No. 29,351.

122 United States District Court, Southern District of New York.

[Title omitted.]

Stipulation as to Service of Citation.

[Filed Jan. 24, 1923.]

It is hereby stipulated that there be added to the record in the United States Supreme Court, at the foot of the citation, the words, "due and timely service of a copy of the within admitted. Dated March 24, 1922." William Hayward, U. S. Attorney. Olecott, Bonynge, McManus & Ernst, Solicitors for Complainants. Wm. Hayward, U. S. Attorney, Solicitor for Defendants. Dated New York, January 23, 1923.

123 [File endorsement omitted.]

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